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2011-1009
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In The
United States Court of Appeals
For The Federal Circuit

SOVERAIN SOFTWARE LLC,

Plaintiff-Appellee,

v.

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

APR 21 2011

JAN HURBALLY
CLERK

NEWEGG INC.,

Defendant-Appellant.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS IN
CASE NO. 07-CV-0511, JUDGE LEONARD DAVIS.**

JOINT APPENDIX

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SOVERAIN SOFTWARE LLC,

Plaintiff,

vs.

NEWEGG INC.,

Defendant.

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**CASE NO. 6:07 CV 511
PATENT CASE**


FINAL JUDGMENT

Pursuant to Rule 58 of the Federal Rules of Civil Procedure, consistent with the Court's contemporaneous Memorandum Opinion and Order, and in consideration of the jury verdict delivered on April 30, 2010 and the entirety of the record available to this Court, the Court **ORDERS AND ENTERS FINAL JUDGMENT** as follows:

- Defendant Newegg Inc. ("Newegg") is found to have unlawfully infringed U.S. Patent Nos. 5,715,314 (the "'314 patent"), 5,909,492 (the "'492 patent"), and 7,272,639 (the "'639 patent") (collectively, "patents-in-suit").
- The patents-in-suit are not invalid and are enforceable.
- The Court awards damages to Soverain Software LLC ("Soverain") for Newegg's infringement of the '314 and '492 patents in the amount of \$2,500,000.
- Soverain is further awarded a new trial on damages for Newegg's infringement of the '639 patent, to be held after all appeals have been exhausted.
- Soverain is further awarded post-verdict damages of \$2,900 per day from May 1, 2010 until the date of this Final Judgment.

- Sovereign is further awarded prejudgment interest on the actual damages found by the jury calculated at the prime rate as of the date of this Final Judgment compounded monthly through July 31, 2010 and compounded daily for the month of August 2010.
- Sovereign is awarded its prejudgment Costs of Court.
- Sovereign is entitled to post-judgment interest as provided for by 28 U.S.C. § 1961 for any time period between the entry of this Final Judgment and the date upon which Sovereign receives payment from Newegg as ordered herein.
- For the reasons stated in the Court's contemporaneous Memorandum Opinion and Order, Newegg is hereby **ORDERED**, for the remaining life of the '314 and '492 patents, to pay Sovereign an ongoing royalty of \$0.15 per infringing transaction.
- All relief not granted in this Final Judgment is **DENIED**.
- All pending motions not previously resolved are **DENIED**.

So **ORDERED** and **SIGNED** this 11th day of August, 2010.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SOVERAIN SOFTWARE LLC,

Plaintiff,

vs.

NEWEGG INC.,

Defendant.

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**CASE NO. 6:07 CV 511
PATENT CASE**

MEMORANDUM OPINION AND ORDER

Before the Court are Sovereign’s Renewed Motion for Judgment as a Matter of Law (“JMOL”) of Infringement of the ’314, ’492, and ’639 Patents and Motion for New Trial (“MNT”) on ’639 Patent Damages (Docket No. 402); Sovereign’s Motion for Permanent Injunction or, in the Alternative, Ongoing Royalties (Docket No. 403); Sovereign’s Motion for Prejudgment Interest and Costs, Post-Verdict Damages to Judgment, and Post-Judgment Interest (Docket No. 404); Newegg’s Renewed Motion for JMOL on Damages and Alternative MNT or Remittitur (Docket No. 406); Newegg’s Renewed Motions for JMOL of Non-Infringement and Invalidity of the Asserted Claims and Alternative MNT (Docket No. 407); and Newegg’s Opposed Motion to Strike Certain Evidence Submitted in Support of Sovereign’s Post-Trial Motions (Docket No. 411). For the reasons stated below, the Court **GRANTS** in part Sovereign’s motion for JMOL on infringement and MNT on damages (Docket No. 402), **GRANTS** in part Sovereign’s motion for permanent injunction or, in the alternative, ongoing royalties (Docket No. 403), **GRANTS** in part Sovereign’s motion for pre-judgment interest, post-verdict damages, and post-judgment interest (Docket No. 404), and **DENIES** all other motions.

BACKGROUND

Plaintiff Soverain Software LLC (“Soverain”) filed suit against Newegg Inc. (“Newegg”) and several other defendants in November 2007. Newegg is the only remaining defendant. Soverain asserts U.S. Patent Nos. 5,715,314 (the “’314 patent”), 5,909,492 (the “’492 patent”), and 7,272,639 (the “’639 patent”) (collectively, “the patents-in-suit”) against Newegg. The ’314 and ’492 patents, both entitled “Network Sales System,” are directed to a network-based sales system including at least one buyer computer, at least one merchant computer, and at least one payment computer, all interconnected by a computer network. The asserted claims in the ’314 and ’492 patents are system claims. The ’639 patent, entitled “Internet Server Access Control and Monitoring Systems,” is directed to methods for controlling and monitoring access to network servers. The asserted claims of the ’639 patent are method claims.

A jury trial began on April 26, 2010. At trial, Soverain argued that Newegg used technology for its websites that infringed claims 35 and 51 of the ’314 patent; claims 17, 41, and 61 of the ’492 patent; and claims 60 and 79 of the ’639 patent. Newegg argued that it did not infringe Soverain’s patents and that Soverain’s patents were invalid. Following a five day trial, the Court submitted the following issues to the jury: (1) direct infringement and active inducement of infringement of the ’314 and ’492 patents, (2) direct infringement of the ’639 patent, (3) invalidity of the patents-in-suit based on anticipation, and (4) damages. The jury returned a verdict finding the patents-in-suit not invalid, the ’314 and ’492 patents infringed, and awarding Soverain \$2,500,000 in damages. Specifically, the jury found Newegg liable for induced infringement of claims 35 and 51 of the ’314 patent and claims 17, 41, and 61 of the ’314 patent, but found that Newegg did not directly infringe any of the asserted claims of the patents-in-suit.

MOTIONS FOR JMOL & NEW TRIAL

JMOL Standard

“The grant or denial of a motion for judgment as a matter of law is a procedural issue not unique to patent law, reviewed under the law of the regional circuit in which the appeal from the district court would usually lie.” *Summit Tech. Inc. v. Nidek Co.*, 363 F.3d 1219, 1223 (Fed. Cir. 2004). In the Fifth Circuit, JMOL may not be granted unless “there is no legally sufficient evidentiary basis for a reasonable jury to find as the jury did.” *Hiltgen v. Sumrall*, 47 F.3d 695, 700 (5th Cir.1995) (internal quotation marks omitted). A court reviews all the evidence in the record and must draw all reasonable inferences in favor of the nonmoving party, however, a court may not make credibility determinations or weigh the evidence, as those are solely functions of the jury. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–51 (2000).

New Trial Standard

Under Rule 59(a) of the Federal Rules of Civil Procedure, a new trial can be granted to any party to a jury trial on any or all issues “for any reason for which a new trial has heretofore been granted in an action at law in federal court.” “A new trial may be granted, for example, if the district court finds the verdict is against the weight of the evidence, the damages awarded are excessive, the trial was unfair, or prejudicial error was committed in its course.” *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 612–13 (5th Cir. 1985).

INFRINGEMENT

NEWEGG’S MOTION FOR JMOL & MNT - NO INDIRECT INFRINGEMENT OF ’314 AND ’492 PATENTS

Newegg moves for JMOL, or alternatively for a new trial, on the issue of no indirect infringement of claims 35 and 51 of the ’314 patent, claim 17 of the ’492 patent, and claims 41 and 61 of the ’492 patent. Claims 35 and 51 of the ’314 patent and claim and claim 17 of the ’492 patent

are referred to as the “shopping cart claims.” Claims 41 and 61 of the ’492 patent, are referred to as the “hypertext statement claims.”

Shopping Cart Claims

Newegg first argues that there was no legally sufficient evidence from which a reasonable jury could conclude that the accused Newegg system meets all the limitations of independent claim 34 of the ’314 patent¹ or independent claim 17 of the ’492 patent (“shopping cart claims”), either literally or under the doctrine of equivalents.

In Newegg’s accused system, when a customer adds an item to a shopping cart, product information concerning that item is held in a cookie on the customer’s computer. Once the customer hits checkout, the contents of the cookie are transferred all at once to a shopping cart database. The issue is whether this transfer in the accused system satisfies two specific limitations in the shopping cart claims: (1) the “modification limitations” and (2) the “plurality limitations.”

Claim 34 of the ’314 patent requires “said shopping cart computer [to be] a computer that modifies said stored representations of collections of products in said database,” and also requires the shopping cart computer be programmed “to modify the shopping cart in the shopping cart database to reflect the plurality of requests to add the plurality of products to the shopping cart.” ’314 patent, col. 14:12–15, 26–28. Claim 17 of the ’492 patent similarly requires “the shopping cart computer [to be] a computer that modifies the stored representations of collections of products in the database,” and that the shopping cart computer be programmed “to modify the shopping cart in the shopping cart database to reflect the plurality of requests to add the plurality of products to the shopping cart.” ’492 patent, col. 14:64–67; col. 15:13–15. These are referred to as the “modification limitations.”

¹ Asserted claims 35 and 51 of the ’314 patent depend from independent claim 34 of the ’314 patent.

Newegg contends that its system cannot satisfy the modification limitations because there is no modification of the shopping cart database, let alone a modification of the shopping cart *in the* shopping cart database. Soverain contends that there is a modification of a shopping cart in the shopping cart database because an instance of a shopping cart in the database is changed. The Court construed the phrase “to modif[y] [the shopping cart in the shopping cart database]” to mean “to change [an instance of a shopping cart in a shopping cart database].” Docket No. 359-1, at 1. Soverain’s technical expert, Dr. Grimes, basing his opinion on the Court’s claim construction and other evidence presented at trial, testified that Newegg’s system uses a two step process. First, when the customer clicks the check out button, a shopping cart ID is generated, which creates a holding space in the shopping cart database. Soverain contends this step creates an instance of a shopping cart in the shopping cart database. Next, the contents of the customer’s shopping cart are moved to the shopping cart database in association with the shopping cart ID. Soverain contends this step represents the required modification. Dr. Grimes further testified that modifying the shopping cart to add all the products at once upon checkout is sufficient to satisfy the modification limitations.

Newegg argues that Soverain’s logic is flawed because the shopping cart ID and the shopping cart are inserted into the database at the same time, and this “single instantiation” cannot be a modification of the shopping cart. Newegg also argues that a shopping cart ID cannot be a shopping cart under the Court’s construction. Soverain does not allege that the shopping cart ID is a shopping cart, just that once the shopping cart ID is created, “an instance of a shopping cart” exists in the database. Once the customer’s selected products are inserted into the shopping cart in the shopping cart database, that “instance of a shopping cart” is modified. Both Newegg and Soverain presented their infringement theories to the jury, and it was up to the jury to determine which infringement theory was best supported by the testimony and evidence. Accordingly, Soverain presented legally

sufficient evidence for the jury to conclude that Newegg's system satisfied the modification limitations.

Claim 34 of the '314 patent requires the buyer computer be programmed "to receive a plurality of requests from a user to add a plurality of respective products to a shopping cart in said shopping cart database," and claim 17 of the '492 patent similarly requires the buyer computer be programmed to "receive a plurality of requests from a user to add a plurality of respective products to a shopping cart in the shopping cart database." '314 patent, col. 14:3-6; '492 patent, col. 14:54-57. These are referred to as the "plurality limitations."

Newegg contends that moving the customer product information "en masse" from the cookie to the shopping cart database reads the word "respective" out of the plurality limitations. Newegg argues the word "respective" in the claim language requires the accused system to modify the shopping cart database after each product is requested by the customer. However, Dr. Jack Grimes, Soverain's expert, testified that the customer's "ADD TO CART" requests are "requests from a user to add . . . products to a shopping cart in [the] shopping cart database" because the products requested from the user ultimately end up in the shopping cart database, which is all the limitation requires. Trial Tr. 4/26/10 P.M., 81:15-86:7. Dr. Grimes further testified that the plurality limitations are satisfied because each request is associated with a respective product, and a modification of the shopping cart database after each request is not required by the claims. Trial Tr. 4/27/10 A.M. 30:15-31:2. Thus, Soverain presented legally sufficient evidence for the jury to conclude that Newegg's system satisfied the plurality limitations.

Furthermore, Dr. Grimes testified that Newegg's method of adding products one at a time to a cookie and then all at once to a shopping cart in the shopping cart database is equivalent to adding the products one at a time to a shopping cart in the shopping cart database. Trial Tr. 4/26/10

P.M., 93:13–97:17. Thus, at the very least, there was substantial evidence to support a finding that Newegg’s system satisfies both the modification and plurality limitations and infringes under the doctrine of equivalents. Accordingly, Soverain presented legally sufficient evidence for the jury to conclude that Newegg’s accused system satisfied all limitations of the shopping cart claims, either literally or by equivalents.

Hypertext Statement Claims

Claims 41 and 61 of the ’492 patent, which depend from claim 15 of the ’492 patent, are referred to as the “hypertext statement claims.” These claims require a hypertext link that provides details about the transaction, including transaction history. Newegg argues Soverain presented no evidence that any Newegg customer ever accessed the hypertext link on Newegg’s accused system and thus there is no evidence of any “use” of the hypertext statement system.² Newegg relies on *ACCO Brands, Inc. v. ABA Locks Manufacturer Co.*, 501 F.3d 1307 (Fed. Cir. 2007), *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, (Fed. Cir. 2009), and *E-Pass Techs., Inc. v. 3Com Corp.*, 473 F.3d 1213 (Fed. Cir. 2007), to challenge the jury’s finding of infringement. In *ACCO*, the Federal Circuit found no direct infringement where the accused product could be used in both an infringing and non-infringing manner and the accused inducer only instructed customers on the non-infringing manner. *ACCO*, 501 F.3d at 1313. In *Lucent*, the Federal Circuit allowed the jury’s verdict of induced infringement to stand where the accused inducer designed the accused products to be used in an infringing manner and instructed its customers to use the accused products in both an infringing

² Although Newegg also contends it does not satisfy the limitation of “the client computer being programmed to display the statement document” in Claim 15 of the ’492 patent, there is legally sufficient evidence to support the jury’s finding that Newegg’s accused system meets this limitation of the hypertext statement claims. See Trial Tr. 4/26/10 P.M., 118:18–120:6.

and non-infringing manner. *Lucent*, 580 F.3d at 1318–19. In *E-Pass*, the only proof of direct infringement was excerpts from product manuals for various accused devices, “show[ing], at best that the [defendants] taught their customers each step of the claimed method in isolation.” *E-Pass*, 473 F.3d at 1222.

ACCO and *E-Pass* are distinguishable from the instant facts and do not support overturning the jury’s verdict, while *Lucent* actually supports the jury’s verdict. Although capable of non-infringing modes of operation, Newegg’s order history system is reasonably capable of infringing the hypertext statement system claims. See *Mass Engineered Design, Inc. v. Ergotron, Inc.*, 633 F. Supp. 2d 361, 378 (“[T]o infringe an apparatus claim, it is not necessary for an accused device actually to be performing the functions specified by the claim. All that is required is that the device have the claimed structure, and that this structure in the device have the capability of functioning as described by the claim.”). Sovereign presented sufficient evidence showing that Newegg instructs its customers to use its system in an infringing manner. Pl.’s Ex. 15, Docket No. 409-10. Indirect infringement and the corresponding direct infringement may be proved by circumstantial evidence. See *Liquid Dynamics Corp. v. Vaughan Co.*, 449 F.3d 1209, 1219 (Fed. Cir. 2006). “There is no requirement that direct evidence be introduced, nor is a jury’s preference for circumstantial evidence over direct evidence unreasonable per se.” *Id.* Accordingly, the jury was presented with legally sufficient evidence to conclude that Newegg’s customers used the order history system, and thus infringed the hypertext statement claims.

Newegg’s Customers “Use” of the System Claims

Newegg next argues that even if the accused systems meet all limitations of the shopping cart and hypertext statement claims, there was no legally sufficient evidence from which a jury could

conclude that any Newegg customer satisfies each and every limitation of any relevant claim. Induced infringement requires the plaintiff to prove a corresponding act of direct infringement. *See DSUMed. Corp.*, 471 F.3d at 1303. Newegg contends that its customers do not directly infringe any relevant claim because they do not own, possess, operate, direct, or control the accused system. Specifically, Newegg argues that because its customers only own or possess the buyer or client computer and do not “use” anything on the “Newegg side” of the system, they do not practice each and every element of the claimed invention and thus cannot directly infringe. Sovereign contends Newegg’s customers “use” the system “as a whole” and thus directly infringe.

The relevant claims of the ’314 and ’492 patents are all system claims. Although Newegg originally argued that the divided infringement standard set forth in *BMC Resources, Inc. v. Paymentech, L.P.*, 498 F.3d 1373, and *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318 (Fed. Cir. 2008), applied to both system and method claims, Newegg now concedes that the *BMC/Muniauction* divided infringement standard only applies to method claims and is inapplicable here. Accordingly, the Court is tasked with determining what constitutes “use” of system claims for purposes of determining infringement. “In the context of [35 U.S.C.] § 271(a), courts interpret the term ‘use’ broadly to determine if behavior constitutes an infringing ‘use’ of a patented invention.” *Renhcol Inc. v. Don Best Sports*, 538 F. Supp. 2d 356, 360 (E.D. Tex. 2008) (Davis, J.) (citing *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282, 1316–17 (Fed. Cir. 2005)). In *NTP, Inc. v. Research in Motion, Ltd.*, the Federal Circuit addressed what constitutes “use” for purposes of determining the situs of use of a claimed system. 418 F.3d at 1313–18. “The use of a claimed system under section 271(a) is the place at which the system *as a whole* is put into service, i.e., the place where control of the system is exercised and beneficial use of the system obtained.” *Id.* at 1317 (emphasis added).

The *NTP* court specifically emphasized the fundamental distinction between the “use” of a system and the “use” of method, noting that “use” of a method is “unlike use of a system *as a whole*, in which the components are used *collectively*, not individually.” *Id.* at 1318 (emphasis added).

Numerous district courts have utilized the Federal Circuit’s analysis in *NTP* to interpret “use” broadly to determine infringement. In *epicRealm, Licensing, LLC v. Autoflex Leasing, Inc.*, the claimed method and apparatus was directed to “managing dynamic web page generation requests.” 492 F. Supp. 2d 608, 613 (E.D. Tex. 2007) (Folsom, J.). The court found that the customers did not “use” the software because they did not control and were not responsible for running the software that managed the incoming requests—they merely submitted requests to the web server. *Id.* at 615. The court noted that “the issue of control is central to determining whether a party is liable for ‘using’ a claimed invention,” and that it is important that the function controlled by the user is the exact function the claimed system was directed to. *Id.* at 614 (“Importantly, the claimed system in *NTP* was directed to a system for the transmission of messages . . . and that is exactly the function that the defendant’s customers controlled. Thus, the defendant’s customers were users of the system.”).

In *Renhcol Inc. v. Don Best Sports*, the claims were directed to an electronic marketplace for prediction information, claiming a computer storage medium comprising code to facilitate transactions in the prediction information market and a computer programmed to execute that code. 538 F. Supp. 2d at 361–62. In *Renhcol*, this Court found that “use” of the computer storage medium and programmed computer required control of the execution of the code located on the accused computer and computer storage medium, but found that certain suppliers and consumers of the marketplace controlled execution of the code by uploading and downloading prediction info to and

from the marketplace, thus precluding summary judgment based on situs of use. *Id.* at 363–64. In *Nuance Communications Inc. v. Tellme Networks, Inc.*, the claims were direct to an “apparatus for processing verbal information for completing a task.” — F. Supp. 2d —, 2010 WL 1609883, *8 (D. Del. April 20, 2010). The *Nuance* court noted that “[t]he completion of a task is the reason that a caller engages the accused services,” and thus calling the accused services may constitute an infringing use if the caller exercised control over the accused services by dictating the format and manner in which the task is accomplished.

Newegg’s “own, possess, operate, direct, or control” standard is in direct conflict with the analysis set forth in *NTP*. Although Soverain’s “use” of a system “as a whole” standard is more in line with established law, the cases here also stress the importance of the control element. The shopping cart claims are directed to a “network-based sales system” and “hypertext statement system.” The claimed systems are directed to the function of purchasing products and viewing order and transaction history, and those are the exact functions controlled by Newegg’s customers. Newegg’s customers control the operation of Newegg’s sales system by choosing the products to purchase, when to checkout, and when to submit an order, and they control Newegg’s hypertext-statement system by choosing to view their order history and transaction details. *See* Trial Tr. 4/26/10 P.M., 60:18–129:4, 135:15–137:21. In addition, Newegg’s customer use and benefit from Newegg’s systems when they purchase products and view their order histories. *See id.* Accordingly, the jury was presented with sufficient evidence to support the jury’s verdict that Newegg’s customers were “users” of the Newegg’s system. Thus, the Court **DENIES** Newegg’s motion for JMOL and MNT of no indirect infringement of the ’314 patent and ’492 patents.

SOVERAIN'S MOTION FOR JMOL & MNT - DIRECT INFRINGEMENT OF '314 AND '492 PATENTS

Soverain moves for JMOL, or alternatively for a new trial, on the issue of direct infringement of claims 35 and 51 of the '314 patent, claim 17 of the '492 patent, and claims 41 and 61 of the '492 patent. Soverain contends that Newegg directly infringes the asserted claims of the '314 patent and '492 patents because Newegg "uses" its sales system just as Newegg's customers do. Soverain's post-verdict briefing does not adequately address the necessary control element that is central to determining "use" of a claimed invention. Furthermore, at the post-verdict hearing, Soverain indicated that "[t]he reason . . . [it] moved for a new trial under direct [infringement] theories [was] in case . . . [Newegg] prevail[ed] on their induced theory." Post-Verdict Hr'g Tr. 4/2/10 P.M., 16:7-10. As Newegg did not prevail on overturning the jury's verdict of induced infringement of the '314 patent and '492 patents, it is not necessary to address Soverain's motion for JMOL of direct infringement in detail. The jury was presented with sufficient evidence to support the jury's verdict that Newegg is not a "user" of its system and thus, does not infringe. Accordingly, the Court **DENIES** Soverain's motion for JMOL and MNT of direct infringement of the '314 patent and '492 patents.

SOVERAIN'S MOTION FOR JMOL & MNT - DIRECT INFRINGEMENT OF CLAIM 79 of '639 PATENT

Soverain moves for JMOL, or alternatively for a new trial, on the issue of direct infringement of claim 79 of the '639 patent. Claim 79 is directed to a "method of processing, in a server system, service requests from a client to the server system." '639 patent, col. 14:43-44. Soverain contends that Newegg irrefutably meets every limitation of the claim, while Newegg contends that certain limitations of the claim can only be satisfied by the client or customer. If Newegg is correct that the

claims require action by multiple parties, then the divided infringement standard set forth in *BMC* and *Muniauction* would be applicable. Thus, the relevant inquiry is whether Newegg's customers perform any required steps of these method claims.

The parties dispute which actions are actually required by claim 79, which depends from claim 78. Claims 78 and 79 provide as follows:

78. A method of processing, in a server system, service requests from a client to the server system through a network, said method comprising the steps of:

receiving, from the client, a service request to which a *session identifier stored at the client has been appended by the client*, wherein communications between the client and server system are according to hypertext transfer protocol;

validating the session identifier appended to the service request; and servicing the service request if the appended session identifier is valid.

79. The method of claim 78, further comprising, in the server system:

receiving an initial *service request from the client*;

creating, responsive to the initial service request, the session identifier; and

returning the session identifier to the client for storage by the client for use in subsequent distinct requests to the server system.

'639 patent, col. 14:43–60 (emphasis added). The bold portions of the claims illustrate the steps Soverain contends the claims require. Newegg, on the other hand, contends that the italicized portions of the claim represent additional claim limitations requiring action on the part of the user. Soverain contends that Newegg is attempting to create multiple-actor issues by reading additional limitations into the claims.

Both parties cite to *SiRF Technology, Inc. v. International Trade Commission* to support their reading of the claims. 601 F.3d 1319 (Fed. Cir. 2010). In *SiRF*, the Federal Circuit did not even reach the question of divided infringement because it found the claims did not require any specified actions be taken by third parties. *Id.* at 1329. The claim language at issue in *SiRF* contained similar language as the claims at issue here: “receiving satellite ephemeris at a first location” and “receiving

satellite signals from at least one satellite and at least one receiving station.” *Id.* The court found that “[t]his [was] not a situation where a method claim specifies performance of a step by a third party, or in which a third party actually performs some of the designated steps.” *Id.* As in *SiRF*, “the method claims at issue here are drawn to actions which can be performed and are performed by a single party.” *Id.* Moreover, in *BMC Resources, Inc. v. Paymentech, L.P.*, the Federal Circuit observed that “[a] patentee can usually structure a claim to capture infringement by a single party.” 498 F.3d at 1381. For example, a patentee might structure the claims so that the steps “feature[] references to a single party’s supplying or *receiving* each element of the claimed process.” *Id.* (emphasis added). Claims 78 and 79 are drafted in this manner, specifying the required action by Newegg (e.g., “receiving”), along with a limitation defining the action’s object (e.g., “service request from the client”).

Dr. Grimes testified that all of the steps contained in dependent claim 79 are performed by Newegg through its server system. Trial Tr. 4/26/10 P.M., 158:21–165:18. During its cross-examination of Dr. Grimes, Newegg did not question Dr. Grimes on the steps recited by claim 79, but instead focused on actions not specifically required by the claim, such as whether the customer *sends* the service request to the server and whether the session identifier stored at the client has been *appended* by the client. Trial Tr. 4/27/10 A.M., 61:8–62:3. Dr. Grimes explained during direct examination that although a client must send a request for Newegg to receive and must append the session identifier to the request, claims 78 and 79 do not recite steps of sending and appending. Trial Tr. 4/26/10 P.M., 159:11–160:9.

In addition, Newegg’s own technical expert, Edward Tittel, did not testify as to any of the steps actually included in claim 79 because Mr. Tittel failed to address claim 79 in his expert reports

and was precluded from testifying outside the scope of his reports. To get around this, Newegg questioned Tittel about claim 1 of the '639 patent and attempted to equate claim 1 to claims 78 and

79. Claim 1 provides as follows:

1. A method of processing service requests from a client to a server system through a network, said method comprising the steps of forwarding a service request from the client to the server system, wherein communications between the client and server system are according to hypertext transfer protocol;

returning a session identifier from the server system to the client, *the client storing the session identifier* for use in subsequent distinct requests to the server system; and

appending the stored session identifier to each of the subsequent distinct requests from the client to the server system.

'639 patent, col. 10:26–38 (emphasis added). When questioning Mr. Tittel about the storing action, Newegg's counsel stated that "this limitation is also in Claim 78." Trial Tr. 4/29/10 A.M., 43:13-18.

This is likely to have misled the jury into thinking that claim 60, which depends from claim 1, and claim 79, which depends from claim 78, were one in the same. The wording of the claims clearly demonstrates this is not the case. Unlike claims 78 and 79, claim 1, and therefore claim 60, expressly require the steps of "forwarding" the service request and "storing" and "appending" the session identifier, which are all customer actions. Although the phrases Newegg points to in claim 79 (e.g., "service request to which a *session identifier stored at the client has been appended by the client*") are limitations that must be satisfied, "appending" and "sending" are not separate steps requiring action in claim 79. Because Newegg did not refute Dr. Grime's testimony that Newegg performs each properly defined step of claim 79, and because no reasonable jury could have found that claim 79 was not infringed, the Court **GRANTS** Sovereign's motion for JMOL of direct infringement of claim 79 of the '639 patent.

DAMAGES

SOVERAIN'S MNT - DAMAGES FOR '639 PATENT

Having granted Soverain's motion for JMOL on Newegg's direct infringement of claim 79 of the '639 patent, the Court **GRANTS** Soverain's motion for a new trial on damages for such infringement, to be held after all appeals have been exhausted.

NEWEGG'S MOTION FOR JMOL, MNT, OR REMITTITUR - DAMAGES FOR '314 AND '492 PATENTS

Newegg moves for JMOL that total damages in this case cannot exceed \$500,000. In the alternative, Newegg moves for a new trial on damages or a remittitur in the amount of \$500,000. In support of its motion for JMOL, Newegg argues that Soverain's damages demand was excessive, unsupported by the facts, and inconsistent with Federal Circuit precedent. Thus, Newegg contends it presented the only valid damages theory, which was a lump sum of \$500,000, representing a paid-up license for the life of the patent. Specifically, Newegg argues: (1) Soverain's damages expert, James Nawrocki, violated the Entire Market Value rule and Georgia Pacific factor 13; (2) Mr. Nawrocki failed to exclude or account for non-infringing uses; (3) Mr. Nawrocki conducted an improper "commercial success" analysis; and (4) Soverain had no evidentiary support for a use-based running royalty.

First, Newegg contends that Mr. Nawrocki used Newegg's entire sales as the royalty base and a 25-33% Rule of Thumb as the royalty rate. Soverain counters that Mr. Nawrocki used the number of infringing transactions as the royalty base, and considered Newegg's gross sales in determining the royalty rate. Considering the foundation laid by Mr. Nawrocki's testimony, his application of the 25% Rule of Thumb was relevant and reliable. In addition, Newegg cross-

examined Mr. Nawrocki on the application of the Rule of Thumb, Trial Tr. 4/27/10 P.M., 146:10-23, and presented contrary evidence on the issue of damages. Trial Tr. 4/29/10 P.M., 11:5–65:7. As for Newegg’s entire market value rule argument, Mr. Nawrocki never relied on the entire market value rule in his expert reports or at trial. Indeed, had Sovereign been permitted to argue an “entire market value” theory, it would have been entitled to a substantially larger portion of Newegg’s operating profit than under Mr. Nawrocki’s theory of damages. *See i4i Ltd. P’ship v. Microsoft Corp.*, 670 F. Supp. 2d 568, 592 n.8 (E.D. Tex. 2009) (Davis, J.) (citing *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1331 (Fed. Cir. 2009) (explaining that the entire market value rule “permits a patentee to recover the entire value of an apparatus that contains both patented and unpatented components”)). Nawrocki conducted a proper *Georgia-Pacific*³ analysis to determine a reasonable royalty rate to apply to the number of infringing transactions royalty base, and his testimony in this regard was appropriately considered by the jury. Trial Tr. 4/27/10 P.M., 81:19–132:15.

Newegg next argues that Nawrocki failed to exclude single-item sales, which Newegg contends do not infringe, from his royalty. Although Newegg represents in its briefing that Dr. Grimes admitted that single-item sales do not infringe, Dr. Grimes admitted no such thing. Dr. Grimes testified that “the structure has to contain the ability for the user to make multiple requests” in order to infringe. Trial Tr. 4/26/10 P.M., 81:15–86:5. Thus, it was not improper for Nawrocki to include single-item sales in his reasonable royalty analysis. Furthermore, Newegg’s arguments regarding Nawrocki’s failure to account for transactions that do not meet the hypertext statement limitation are misplaced. As stated above in addressing infringement, “to infringe an apparatus

³ *Georgia-Pacific Corp. v. U.S. Plywood Co.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970).

claim, it is not necessary for an accused device actually to be performing the functions specified by the claim. All that is required is that the device have the claimed structure, and that this structure in the device have the capability of functioning as described by the claim.” *Mass Engineered Design, Inc. v. Ergotron, Inc.*, 633 F. Supp. 2d 361, 378. Mr. Nawrocki properly considered the capability of infringement in his analysis of reasonable royalty for the ’314 and ’492 patents.

Third, Newegg argues that Nawrocki improperly focused on Newegg’s commercial success, rather than the success of the patented invention. Although the Court “must carefully tie proof of damages to the claimed invention’s footprint in the market place,” *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 869 (Fed. Cir. 2010), this does not prevent the alleged infringer’s profits or revenues from being a relevant consideration in a *Georgia-Pacific* analysis. Indeed, the factors for calculating a reasonable royalty under *Georgia-Pacific* make the character of the commercial embodiment of the invention, the benefits to those who have used the invention, the extent to which the infringer has made use of the invention, and any evidence probative of the value of that use specifically relevant to the “reasonable royalty” analysis. *Georgia-Pacific*, 318 F. Supp. at 1120.

Finally, Newegg contends that there was no evidentiary support for Soverain’s use-based running royalty theory. Newegg’s argument ignores the fact that certain fully paid-up lump-sum licenses introduced into evidence were based on running components, representing a percentage of sales, profits, or a fee per transaction. *See* Trial Tr. 4/27/10 P.M., 100:8–105:9; Trial Tr. 4/29/10 P.M., 116:10–117:9. Mr. Nawrocki’s opinion that damages should be calculated on a running royalty basis is supported by sufficient evidence. Furthermore, the Court instructed the jury that the damages period ran from November 2, 2007 to the present, without any objection from either party. Thus, there is no reason to assume the jury’s verdict of \$2.5 million represented a paid-up license

for the life of the patent.

The purpose of this Court's "gatekeeper" function under *Daubert v. Merrell Dow Pharmaceuticals, Inc.* is served by "ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." 509 U.S. 579 (1993). There is sufficient evidence that Mr. Nawrocki's damages opinion is both relevant and rests on a reliable foundation. Additionally, "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Id.* at 596. Newegg vigorously cross-examined Mr. Nawrocki concerning his damages opinion. Trial Tr. 4/27/10 P.M., 132:20–167:7; 171:15–21. Newegg also presented its own lump-sum damages theory, and the jury was free to weigh the parties' distinct theories and evidence. "[T]he factual determination of a reasonable royalty . . . need not be supported, and indeed, frequently is not supported by the specific figures advanced by either party." *SmithKline Diagnostics, Inc. v. Helena Labs. Corp.*, 926 F.2d 1161, 1167 (Fed. Cir. 1991). The jury's verdict of \$2,500,000 is well within the amounts advocated by the parties' damages experts and is supported by sufficient evidence. Thus, the Court **DENIES** Newegg's motion for JMOL on damages.

Alternatively to JMOL, Newegg requests a new trial or remittitur. In addition to arguing that the jury's damages award was excessive and against the great weight of the evidence, Newegg sets forth a number of alleged errors that it contends infected the jury's award. However, most of these errors derive from Soverain's damages theory, which the Court has already found reliable. In addition, Newegg made a tactical decision during trial not to offer evidence of the amount Soverain paid for the patents-in-suit at a bankruptcy court auction and thus, Newegg cannot now complain that the Court excluded such evidence. *See* Trial Tr. 4/27/10 P.M., 64:9–65:16. Furthermore, remittitur

is within the sound discretion of the trial court and is only appropriate when the damages verdict is “clearly excessive.” *See Thompson v. Connick*, 553 F.3d 836, 865 (5th Cir. 2008). Accordingly, the Court **DENIES** Newegg’s MNT or remittitur for the same reasons outlined with regard to Newegg’s motion for JMOL on damages and for the reasons set forth above.

NEWEGG’S MOTION FOR JMOL & MNT - INVALIDITY

Newegg moves for JMOL, or alternatively for a new trial, on the issue of invalidity of all the asserted patent claims based on anticipation and obviousness. Specifically, Newegg asserts that (1) claims 35 and 51 of the ’314 patent were anticipated by the CompuServe Mall; (2) claims 35 and 51 of the ’314 patent and claim 17 of the ’492 patent were obvious based on the CompuServe Mall, alone or in combination with Gifford; (3) claims 41 and 61 of the ’492 patent were obvious based on Gifford; and (4) claims 60 and 79 of the ’639 patent were obvious based on Gifford and Johnson, either alone or in combination. In addition, Newegg reurges each of the invalidity grounds set forth in Newegg’s Rule 50(a) motion for JMOL submitted at the close of evidence (Docket No. 368). Newegg finally argues that if the Court concludes JMOL is not warranted based on the foregoing grounds, the Court should grant a new trial on anticipation and obviousness based on a number of errors regarding the admission and exclusion of evidence, charge error, and the Court’s dismissal of Newegg’s obviousness claims at the close of evidence.

In order to show that it is entitled to JMOL on its affirmative defense of invalidity, Newegg is required to prove the essential elements of that defense to a virtual certainty. *Bank of La. v. Aetna U.S. Healthcare Inc.*, 468 F.3d 237, 241 (5th Cir. 2006) (“For a defendant to obtain summary judgment on an affirmative defense, it must establish beyond dispute all of the defense’s essential elements.”). As for Newegg’s motion for JMOL of anticipation based on claims 35 and 51 of the

'314 patent, Newegg must prove that the CompuServe Mall discloses each and every limitations of the claimed invention arranged exactly as claimed, or that any missing element is necessarily present, or inherent, in the CompuServe Mall. *See Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008); *Schering Corp. v. Geneva Pharms.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003). Newegg argues that Alexandor Trevor's and Edward Tittel's testimony regarding the CompuServe Mall was sufficient to establish anticipation. However, Mr. Tittel did not testify regarding the limitation of "said buyer computer being programmed . . . to send . . . shopping cart messages . . . each of which comprises a product identifier identifying one of said plurality of products," and Mr. Trevor admitted that the CompuServe Mall was not programmed to send such messages. Trial Tr. 4/28/10 P.M., 83:1-23. Mr. Tittel also failed to explain how the CompuServe Mall reference disclosed a "shopping cart database," as construed by the Court. Mr. Trevor recognized that the references did not disclose such a database. Trial Tr. 4/28/10 P.M., 79:19-80:2. Soverain's expert, Dr. Michael Shamos, relying on Mr. Trevor's trial testimony regarding the CompuServe Mall, presented evidence that the CompuServe Mall did not have a shopping cart message with a product identifier because there was no need for a product identifier. Trial Tr. 4/29/10 P.M., 162:18-165:9. Dr. Shamos further testified that CompuServe Mall did not contain a "shopping cart database" because the personal holding files kept in the main memory failed to meet the Court's construction of "shopping cart database." Trial Tr. 4/29/10 P.M., 165:10-168:17. The jury was free to disbelieve Mr. Tittel's expert testimony, and the existence of contrary testimony by Dr. Shamos supports the jury's conclusion that the CompuServe Mall does not anticipate claims 35 and 51 of the '314 patent.

With regard to obviousness, the Court granted Soverain's motion for JMOL of no obviousness and did not send the obviousness issue to the jury. Newegg's expert, Mr. Tittel, did not

express any opinions on obviousness or conduct a proper *Graham*⁴ analysis. Newegg contends that it need not present expert testimony on the ultimate legal issue of obviousness and thus it was error for the Court to deny Newegg the opportunity to argue obviousness to the jury and submit the issue for a jury finding. The Federal Circuit has made clear that “[t]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008). In *Proveris Scientific Corp. v. Innovasystems, Inc.*, the Federal Circuit upheld the district court’s decision to require defendants to present expert testimony in order to establish anticipation and obviousness. 536 F.3d 1256, 1267–68 (Fed. Cir. 2008). As in *Proveris*, the subject matter in this case “is sufficiently complex to fall beyond the grasp of an ordinary layperson.” *Id.* Accordingly, because Newegg did not meet its burden of establishing a prima facie case of obviousness of the asserted claims, the Court stands by its prior decision granting Soverain’s motion for JMOL on obviousness.

Lastly, Newegg asserted various grounds of alleged error in support of its MNT. First, the Court’s admission of evidence related to the existence of settlement licenses was not prejudicial to Newegg because neither the licenses themselves nor any evidence relating to the specific terms of the licenses were admitted. In fact, the Court only allowed Soverain to state the names of its well-known licensees to rebut Newegg’s offering of license agreements to smaller companies. Second, while the Court’s exclusion of the belatedly produced CompuServe Mall materials caused only minor prejudice to Newegg, admitting these materials on the eve of trial would have been highly prejudicial to Soverain. Furthermore, Newegg can hardly claim prejudice with regard to the Court’s exclusion of the belatedly produced documents given the Court’s admission of the CompuServe

⁴ *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

Manuals over Soverain's strenuous objections. Third, although Newegg contends the Court failed to instruct the jury that a witness's testimony only has to be corroborated if the witness is an interested party, Newegg's allegation of charge error is without merit. "[C]orroboation is required of any witness whose testimony alone is asserted to invalidate a patent, regardless of his or her level of interest." *Finnigan Corp. v. Int'l Trade Comm'n*, 180 F.3d 1354, 1369 (Fed. Cir. 1999); *see also Adenta GMBH v. Orthoarm, Inc.*, 501 F.3d 1364 (Fed. Cir. 2007). Lastly, as previously discussed, the Court's dismissal of Newegg's obviousness claims at the close of evidence does not warrant a new trial.

In sum, the jury's verdict on invalidity was not without support and certainly not against the great weight of the evidence. Thus, based on the foregoing reasons, the Court **DENIES** Newegg's motion for JMOL and MNT on invalidity of the patents-in-suit.

**SOVERAIN'S MOTION FOR PREJUDGMENT INTEREST AND COSTS,
POST-VERDICT DAMAGES, AND POST-JUDGMENT INTEREST**

Soverain moves for prejudgment interest and costs, post-verdict damages until the time of judgment, and post-judgment interest. Soverain's request for post-judgment interest is uncontested and is, accordingly, granted pursuant to the provisions of 28 U.S.C. § 1961.

Soverain is also entitled to an award of prejudgment costs. 35 U.S.C. § 284 ("Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court."). Soverain shall provide the clerk of this Court with a detailed bill of costs pursuant to Local Rule CV-54.

With regard to prejudgment interest, Soverain calculates prejudgment interest based on the

jury's \$2,500,000 award using the prime interest rate, compounded quarterly. Newegg does not dispute that Soverain is entitled to prejudgment interest, but argues that prejudgment interest is properly calculated using the U.S. Treasury Bill rate, not prime rate, and that \$2,500,000 is not the proper amount from which prejudgment interest should be calculated. As Newegg's arguments regarding the proper damages award have been previously addressed and rejected, and the Court has determined it will not alter the jury's award of \$2,500,000, prejudgment interest will be calculated on this amount.

The interest rate used to calculate prejudgment interest and the method and frequency of compounding is left to the discretion of the district court. *See Uniroyal, Inc. V. Rudkin-Wiley Corp.*, 939 F.2d 1540, 1545 (Fed. Cir. 1991); *Studiengesellschaft Kohle, m.b.H. v. Dart Indus., Inc.*, 862 F.2d 1564, 1579–80 (Fed. Cir. 1988)(citing *Bio-Rad Labs.*, 807 F.2d at 969). Interest should be awarded from the date of infringement to the date of final judgment. *Nickson Indus., Inc. v. Rol Mfg.*, 847 F.2d 795, 800 (Fed. Cir. 1988). Accordingly, prejudgment interest shall be awarded to Soverain on the \$2,500,000 damages award at the prime rate as of August 11, 2010 compounded monthly through July 31, 2010 and compounded daily for the month of August 2010. Interest should be calculated from the date of infringement through the date of final judgment.

With regard to post-verdict damages, Soverain calculated a daily rate of \$2,900 for post-verdict damages by extrapolating the jury's award of \$2,500,000. *See* Nawrocki's Post-Verdict Declaration, Docket No. 403-2, at 2–3. Soverain's damages expert divided the number of Newegg online sales transactions from January 31, 2010 to April 30, 2010 by 120 days to yield a rate of 32,844 transactions per day. *Id.* Soverain then applied a per transaction royalty of \$0.088 to yield an ongoing royalty of \$2,900 per day of infringement until final judgment. *Id.* Newegg utilized

Soverain's per transaction rate solely for purposes of calculating post-verdict damages, but maintains that the \$2,900 per day royalty must be reduced to \$966.67 per day to account for Newegg's single-item sales transactions. The Court has previously addressed and rejected Newegg's argument regarding single-item sales. Accordingly, post-verdict damages shall be awarded to Soverain in the amount of \$2,900 per day until final judgment.

**SOVERAIN'S MOTION FOR PERMANENT INJUNCTION
OR, IN THE ALTERNATIVE, ONGOING ROYALTIES**

Permanent Injunction

Soverain requests an order permanently enjoining Newegg from using the technology claimed in Soverain's '314 and '492 patents to operate its infringing websites and any colorable variation thereof. Soverain proposes the following language:

Newegg, its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice hereof, are hereby restrained and enjoined, pursuant to 35 U.S.C. § 283 and Fed. R. Civ. P. 65(d), from:

1. infringing or inducing others to infringe U.S. Patent No. 5,715,314 (the '314 patent) through operation of the www.newegg.com, www.newegg.ca, or www.neweggmall.com websites, or any colorable variation thereof, including www.biz.newegg.com, through and including the expiration of the '314 patent, February 3, 2015; and
2. infringing or inducing others to infringe U.S. Patent No. 5,909,492 (the '492) patent through operation of the www.newegg.com, www.newegg.ca, or www.neweggmall.com websites, or any colorable variation thereof, including www.biz.newegg.com, through and including the expiration of the '492 patent, October 24, 2014.

Soverain's Proposed Order Granting Injunctive Relief, Docket No. 403-12. Importantly, Soverain is seeking to enjoin www.biz.newegg.com, a website that is not part of any of the accused systems.

The decision to grant or deny injunctive relief is within the district court's discretion, which

should be exercised consistent with traditional principles of equity. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 394 (2006). A party is entitled to a permanent injunction only if: “1) [the party] has suffered an irreparable injury; 2) that remedies at law, such as monetary damages, are inadequate to compensate for that injury; 3) that, considering the balance of hardships between the [parties], a remedy in equity is warranted; and 4) that the public interest would not be disserved by a permanent injunction.” *Id.* at 391.

First, Soverain argues that its licensing program will be irreparably harmed if Newegg is not enjoined from using Soverain’s patented technology. Soverain contends that if Newegg is not enjoined after having been adjudged an infringer, other infringers will be encouraged to risk litigation, rather than take a license. Although a patent holder may in some cases establish irreparable harm by showing that an existing infringement precludes his ability to license, it is too speculative in this case to assume that third parties will choose to risk litigation rather than license Soverain’s technology simply because Newegg has not been enjoined. *See z4 Techs., Inc. v. Microsoft Corp.*, 434 F. Supp. 2d 437, 440 (E.D. Tex. 2006) (“There is no logical reason that a potential consumer or licensee of z4’s technology would have been dissuaded from purchasing or licensing z4’s product activation technology for use in its own software due to Microsoft’s infringement.”); *but see Commonwealth Scientific & Indus. Research Org. v. Buffalo Tech. (USA), Inc.*, 492 F. Supp. 2d 600, 604 (E.D. Tex. 2007) (“*CSIRO*”) (finding harm to a licensing program sufficient to establish irreparable harm where the patent holder research institution relied heavily on its ability to license to finance its research and development for frontier projects). In addition, Soverain and its predecessors have extensively licensed the patents-in-suit, and Soverain’s patent licensing program has largely focused on obtaining monetary objectives, rather than non-monetary

objectives (e.g., cross licensing for resolution of litigation). Soverain's focus on monetary objectives does not favor an injunction. *Cf. CSIRO*, 492 F. Supp. 2d at 604 (finding that CSIRO's harm was "not merely financial"). Furthermore, although Soverain contends that its Transact product is a direct competitor to the www.neweggmall.com website, any possible competition between Newegg Mall and Transact is too insubstantial to support an injunction. Soverain has not established any competition with respect to www.newegg.com and www.newegg.ca. Thus, this factor weighs against enjoining Newegg.

Second, Soverain contends that monetary remedies are inadequate to compensate Soverain because the injury to Soverain and the value of its technology are not quantifiable. Soverain argues the harm that will result from an inability to license its technology to its competitors without engaging in a full-fledged trial is both incalculable and irreparable. The Court rejects these arguments as purely speculative. Moreover, "[w]hen the patented invention is but a small component of the product the companies seek to produce and the threat of an injunction is employed simply for undue leverage in negotiations, legal damages may well be sufficient to compensate for the infringement and an injunction may not serve the public interest." *eBay*, 547 U.S. at 396. Newegg argues that monetary damages would be adequate to compensate Soverain because the portions of its website relating to shopping cart functionality constitute less than 1% of the total lines of code that make up its system. While this may be true, Soverain has shown that its patented technology is "necessary" to Newegg's e-commerce system. Trial Tr. 4/28/10 A.M., 98:3-14; Trial Tr. 4/29/10 P.M., 30:20-31:4. Although this case presents a unique situation where the infringing component of Newegg's system is a small, yet necessary portion of the entire system, it is equivocal whether this is a situation where "the product is the invention." *Compare CSIRO*, 492 F. Supp. 2d

at 605–06 (finding monetary damages less adequate to compensate for infringement because the infringement related to “the essence of the technology”), *with z4*, 434 F. Supp. 2d at 440 (finding the infringing technology was “a small component of [Microsoft’s] software” because it “in no way related to the core functionality for which the software is purchased by consumers”). However, the jury’s \$2.5 million damages award, which represents only a fraction of the \$22.6 million advocated by Soverain, demonstrates that the infringed claims constitute a small part of the total value of Newegg’s system. Accordingly, this factor also weighs against enjoining Newegg.

The balance of hardships favors Newegg. Soverain only argues its licensing program will suffer if Newegg is not enjoined. It is clear from Soverain’s briefing that its licensing program has focused on obtaining purely monetary objectives. While enjoining Newegg from operating its website would have a significant effect on Newegg and its e-commerce system, the absence of an injunction would not significantly harm Soverain because monetary remedies are adequate to compensate Soverain for Newegg’s continued infringement. Thus, the balance of hardships weighs against enjoining Newegg.

Because Soverain has not shown irreparable harm in the absence of a permanent injunction, any harm Soverain might suffer can be adequately remedied through the recovery of monetary damages, and the balance of hardships weighs in favor of Newegg, an injunction would not serve the public interest and is improper in this instance. Thus, the Court **DENIES** Soverain’s motion for a permanent injunction.

Ongoing Royalties

In the absence of an injunction, Soverain requests an award of ongoing royalties for the remaining life of the ’314 and ’492 patents. “Under some circumstances, awarding an ongoing

royalty for patent infringement in lieu of an injunction may be appropriate.” *Paice LLC v. Toyota Motor Corp.*, 504 F.3d 1293, 1314 (Fed. Cir. 2007) (“*Paice II*”). “Even though a permanent injunction may no longer be proper in many patent cases in light of *eBay*, an ongoing royalty rate must still adequately compensate a patentee for giving up his right under the law to exclude others from making, using, selling, offering for sale or importing his invention.” *Paice LLC v. Toyota Motor Corp.*, 609 F. Supp. 2d 620, 630 (E.D. Tex. 2009) (“*Paice III*”). In addition, the Court must account for the change in the legal relationship between the parties. “Failing to consider the parties’ changed legal status would create an incentive for every defendant to fight each patent infringement case to the bitter end because without consideration of the changed legal status, there is essentially no downside to losing.” *Paice III*, 609 F. Supp. 2d at 628. Furthermore, an on-going post-verdict royalty is appropriately higher than the jury’s pre-verdict reasonable royalty. *See Amado v. Microsoft Corp.*, 517 F.3d 1353, 1362 n.2 (Fed. Cir. 2008); *Creative Internet Adver. Corp. v. Yahoo!, Inc.*, 674 F. Supp. 2d 847, 861 (E.D. Tex. 2009).

Moreover, the Federal Circuit has encouraged parties to negotiate a license amongst themselves regarding the future use of a patented technology before imposing an ongoing royalty. *See Paice III*, 609 F. Supp. 2d at 623 (citing *Paice II*, 504 F.3d at 1315). From the parties’ post-verdict briefing on the ongoing royalty issue, as well as the parties’ settlement negotiation history thus far, it is clear that further license negotiation would be fruitless. Thus, the Court is faced with the task of determining an appropriate ongoing royalty arising from a post-verdict hypothetical negotiation, taking into account the changed relationship between the parties. *See Creative*, 674 F. Supp. 2d at 860.

Newegg is now an adjudged infringer and Newegg’s continued infringement is both

voluntary and intentional, making Newegg's continued infringement willful. *See Paice III*, 609 F. Supp. 2d at 628. In addition, both Newegg and Soverain's financial position has changed dramatically since the hypothetical negotiation. Newegg is now the second largest online-only retailer and has announced its plans for an initial public offering. Soverain's licensing program has had recent success as Soverain has entered into seven agreements with large e-commerce retailers, including Amazon and TigerDirect. As expected, the parties have markedly different views of how these changes affect their respective negotiating positions. The parties' changed financial positions appear to cancel each other out because each party is more successful today than they were at the time of the hypothetical negotiation. However, the Court cannot ignore Newegg's adjudged infringer status in determining an appropriate ongoing royalty.

Reducing the jury's verdict to a per-transaction rate results in an award equal to \$0.088 per Newegg transaction. Soverain contends that an appropriate ongoing royalty, taking into account the changed legal and factual circumstances, is at least \$0.20 per transaction. Newegg contends that Soverain's proposed ongoing royalty is unreasonable because Soverain has failed to take into account Newegg's proposed design-arounds for the shopping cart claims and hypertext statement claims. Newegg argues that these design-arounds should lower the parties' expectations regarding any ongoing royalty or eliminate the need for such royalty altogether. Newegg advocates for an ongoing royalty of 1.25 cents per \$100 transaction, or in the alternative, \$0.088 per transaction because the parties' various changed circumstances cancel each other out.

Newegg's 2009 profit rate of approximately 2.5% yields an operating profit of \$4.68 per transaction. *See Nawrocki's Post-Verdict Declaration*, Docket No. 403-2, at 13. Although Judge Folsom in *Paice III* applied a 25% Rule of Thumb to the profit rate as a starting point to determine

an ongoing royalty, such an approach is not in line with the jury's verdict in this case because \$0.088 per Newegg transaction represents only 1.88% of Newegg's profits. Accordingly, the Court uses Soverain's proposal of \$0.20 as a starting point. Even taking into account Newegg's adjudged infringer status, the jury's award of only \$0.088 per transaction (1.88% of Newegg's profits) counsels against an ongoing royalty of \$0.20 per transaction (4.27% of Newegg's profits). *See Paice III*, 609 F. Supp. 2d at 630 ("[T]he jury's award for past damages . . . counsels in favor of a reduction."). If Newegg proves successful in designing-around the shopping cart claims and hypertext statement claims, it will be freed of the obligation to pay ongoing royalties. When the time comes, Soverain will have the burden of proving that Newegg's design-arounds are not colorably different and thus still infringing. *See Creative*, 674 F. Supp. 2d at 855. Although Newegg's proposed re-designs do not preclude the post-verdict relief Soverain is entitled to given Newegg's adjudged infringement, the Court does consider Newegg's proposed design-arounds because "the costs of switching to an alternative design is a factor that the parties would consider in arriving at an appropriate ongoing royalty rate." *Paice III*, 609 F. Supp. 2d at 627. Based on the foregoing reasons, and the fact that Soverain did not account for Newegg's proposed design-arounds in its \$0.20 proposal, the Court finds it is reasonable to reduce Soverain's proposal by 25%.

Thus, taking into account the changed legal and factual circumstances occurring since the first hypothetical negotiation, the Court **GRANTS** Soverain's motion for ongoing royalties and concludes that \$0.15 per transaction is an appropriate ongoing royalty to adequately compensate Soverain for Newegg's continued infringement.

NEWEGG'S MOTION TO STRIKE EVIDENCE


Newegg moves to strike Mr. Nawrocki's entire declaration and portions of Katharine

Wolanyk's declaration as unreliable, irrelevant, and inadmissible. Both declarations were submitted by Soverain in support of its post-verdict motions. The Court overrules Newegg's objections to these declarations and **DENIES** Newegg's motion to strike.

CONCLUSION

For the aforementioned reasons, the Court **GRANTS** in part Soverain's motion for JMOL on infringement and MNT on damages (Docket No. 402), **GRANTS** in part Soverain's motion for permanent injunction or, in the alternative, ongoing royalties (Docket No. 403), **GRANTS** in part Soverain's motion for pre-judgment interest, post-verdict damages, and post-judgment interest (Docket No. 404), and **DENIES** all other motions.

So **ORDERED** and **SIGNED** this 11th day of August, 2010.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SOVERAIN SOFTWARE LLC

Plaintiff

vs.

NEWEGG INC.

Defendant

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CASE NO. 6:07 CV 511
PATENT CASE

VERDICT FORM

In answering these questions, you are to follow all of the instructions I have given you in the Court's Charge.

INFRINGEMENT

1. Did Soverain prove by a preponderance of the evidence that Newegg directly infringed or induced infringement of the asserted claims of the '314 Patent and the '492 Patent?

Answer "Yes" or "No" for each Claim and each type of infringement below.

	Direct Infringement	Inducement
<u>'314 Patent</u>		
Claim 35	<u>No</u>	<u>Yes</u>
Claim 51	<u>No</u>	<u>Yes</u>
<u>'492 Patent</u>		
Claim 17	<u>No</u>	<u>Yes</u>
Claim 41	<u>No</u>	<u>Yes</u>
Claim 61	<u>No</u>	<u>Yes</u>

2. Did Soverain prove by a preponderance of the evidence that Newegg directly infringed the asserted claims of the '639 Patent?

Answer "Yes" or "No" for each Claim below.

Claim 60 No
Claim 79 No

INVALIDITY

3. Did Newegg prove by clear and convincing evidence that the claims of the '314 Patent, the '492 Patent, and the '639 Patent are invalid?

If you find the claim invalid answer "Yes," otherwise answer "No."

'314 Patent

Claim 35 No
Claim 51 No

'492 Patent

Claim 17 No
Claim 41 No
Claim 61 No

'639 Patent

Claim 60 No
Claim 79 No

DAMAGES

If you have found any claim infringed, answer question 4; otherwise, do not answer question 4.

4. What sum of money, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Soverain for Newegg's infringement of the following patents?

Answer with the amount in dollars and cents.

'314 Patent and/or '492 Patent: \$ 2,500,000.00

'639 Patent: \$ 0.00

Signed this 30 day of April, 2010

JURY FOREPERSON

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SOVERAIN SOFTWARE LLC

Plaintiff

vs.

NEWEGG INC.

Defendant

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**CASE NO. 6:07 CV 511
PATENT CASE**

COURT'S CHARGE

MEMBERS OF THE JURY:

You have heard the evidence in this case. I will now instruct you on the law that you must apply. It is your duty to follow the law as I give it to you. On the other hand, you the jury are the judges of the facts. Do not consider any statement that I have made during the trial or make in these instructions as an indication that I have any opinion about the facts of this case. After I instruct you on the law, the attorneys will have an opportunity to make their closing arguments. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the parties' contentions.

1. GENERAL INSTRUCTIONS

A verdict form has been prepared for you. You will take this form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form. Answer each question on the verdict form from the facts as you find them. Do not decide who you think should win and then answer the questions accordingly. Your answers and your verdict must be unanimous.

In determining whether any fact has been proved in this case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

1.1 Considering Witness Testimony

By the Court allowing testimony or other evidence to be introduced over the objection of an attorney, the Court did not indicate any opinion as to the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court sustained an objection to a question addressed to a witness, the jury must disregard the question entirely, and may draw no inference from the wording of it or speculate as to what the witness would have testified to, if he or she had been permitted to answer the question.

At times during the trial it was necessary for the Court to talk with the lawyers here at the bench out of your hearing, or by calling a recess. We met because often during a trial something comes up that does not involve the jury. You should not speculate on what was discussed during such times.

In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact, or whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony the witness gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people may forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was an intentional falsehood or simply an innocent lapse

of memory; and the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

1.2 How to Examine the Evidence

Certain testimony in this case has been presented to you through a deposition. A deposition is the sworn, recorded answers to questions asked a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, the witness's testimony may be presented, under oath, in the form of a deposition. This deposition testimony is entitled to the same consideration and is to be judged by you as to credibility and weight as if the witness had testified from the witness stand in court.

While you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

There are two types of evidence that you may consider in properly finding the truth as to the facts in the case. One is direct evidence – such as testimony of an eyewitness. The other is indirect or circumstantial evidence – the proof of a chain of circumstances that indicates the existence or nonexistence of certain other facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

1.3 Expert Witnesses

When knowledge of a technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field – called an expert witness – is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it.

In deciding whether to accept or rely upon the opinion of an expert witness, you may consider any bias of the witness, including any bias you may infer from evidence that the expert witness has been or will be paid for reviewing the case and testifying, or from evidence that he or she testifies regularly as an expert witness and that income from such testimony represents a significant portion of the expert's income.

2. SUMMARY OF CONTENTIONS

I will first give you a summary of each side's contentions in this case. I will then tell you what each side must prove to win on these issues.

2.1 Soverain's Contentions

In this case, the plaintiff, Soverain, contends that the defendant, Newegg, uses technology for its websites that infringes claims 35 and 51 of the '314 patent; claims 17, 41, and 61 of the '492 patent; and claims 60 and 79 of the '639 patent. Soverain asks you to award damages for the infringement.

2.2 Newegg's Contentions

Newegg contends that it does not infringe Soverain's patents and that Soverain's patents are invalid. Newegg asks that you deny Soverain any damages.

2.3 Burdens of Proof

Soverain has the burden of proving infringement by a preponderance of the evidence. Preponderance of the evidence means evidence that persuades you that a claim is more likely true than not true. In determining whether any fact has been proved by a preponderance of the evidence, you may, unless otherwise instructed, consider the stipulations, the testimony of all witnesses regardless of who may have called them, and all exhibits received in evidence regardless of who may have produced them. It will be your job to determine whether Soverain has met its burden of proving that infringement of the asserted patent claims is more likely true than not true.

Newegg bears the burden of proving invalidity by clear and convincing evidence. Proof by clear and convincing evidence is a greater burden of proof than proof by a preponderance of the evidence, but less than the burden of proof beyond a reasonable doubt. Clear and convincing evidence is evidence that produces an abiding conviction that the truth of a factual contention is highly probable. In determining whether any fact has been shown by clear and convincing evidence, you may, unless otherwise instructed, consider the stipulations, the testimony of all witnesses regardless of who may have called them, and all exhibits received in evidence regardless of who may have produced them. It will be your job to determine whether Newegg has met its burden of proving the invalidity of the '314, '492, and '639 patent claims.

3. CLAIMS OF THE PATENTS-IN-SUIT

As I told you at the beginning of the trial, the claims of a patent are the numbered sentences at the end of the patent. The claims describe the invention made by the inventor and describe what the patent owner owns and what the patent owner may prevent others from doing. Claims may describe products, such as machines or chemical compounds, or processes for making or using a product. Claims are usually divided into parts or steps, called "elements" or "limitations." For

example, a claim that covers the invention of a table may recite the tabletop, four legs and the glue that secures the legs on the tabletop. The tabletop, legs and glue are each a separate element of the claim.

3.1 Construction of the Claims

In deciding whether or not the accused technology infringes a patent, the first step is to understand the meaning of the words used in the patent claims. It is my job as Judge to determine what the patent claims mean and to instruct you about that meaning. You must accept the meanings I give you and use those meanings when you decide whether or not the patent claims are infringed, and whether or not it is invalid.

Before I instruct you about the meaning of the words of the claims, I will explain to you the different types of claims that are at issue in this case. It may be helpful to refer to the copies of the '314, '492 and '639 patents that you have been given as I discuss the claims at issue here.

3.2 Independent and Dependent Claims

Patent claims may exist in two forms, referred to as independent claims and dependent claims. An independent claim does not refer to any other claim of the patent. It is not necessary to look at any other claim to determine what an independent claim covers. Claim 17 of the '492 patent is an independent claim.

A dependent claim refers to at least one other claim in the patent. A dependent claim includes each of the elements of the other claim to which it refers, as well as the additional elements recited in the dependent claim itself. In this way, the claim "depends" on another claim. To determine what a dependent claim covers, it is necessary to look both at the dependent claim and the other claim or claims to which it refers.

When analyzing the validity and alleged infringement of any dependent claim asserted by Soverain, you must consider all limitations of both the dependent claim and the independent claim from which it depends. For example, claims 35 and 51 of the '314 patent are dependent claims of independent claim 34. Because dependent claim 35 includes all of the limitations of claim 34, if claim 34 of the '314 patent is not infringed, then claim 35 of the '314 patent cannot be infringed. Similarly, if claim 34 of the '314 patent is not anticipated, then claim 35 of the '314 patent cannot be anticipated.

3.3 Interpretation of Claims

In deciding whether or not the accused technology does or does not infringe a patent claim, or whether the asserted prior art does or does not invalidate a patent claim, the first step is to understand the meaning of the words used in the patent claims. The meaning of the words in the patent claims is the same for both the infringement and the validity determinations.

As I stated earlier, it is my job as Judge to determine what the patent claims mean and to instruct you about that meaning. In accordance with that duty, I have interpreted the meaning of some of the language in the patent claims involved in this case. My interpretation of those claims appears in Appendix A to this Charge. You must accept the interpretations contained in Appendix A as correct. The claim language I have not interpreted for you in Appendix A is to be given its ordinary and accustomed meaning as understood by one of ordinary skill in the field of technology.

3.4 Glossary of Patent Terms

A glossary of patent terms is contained in Appendix B to this Charge.

4. INFRINGEMENT

Any person or business entity that, without the patent owner's permission, makes, uses, sells, or offers to sell a device, or practices a method, that is covered by at least one claim of a patent,

before the patent expires, infringes the patent. A patent owner has the right to stop others from infringing the patent claims during the life of the patent. In this case, Soverain asserts that Newegg has infringed the patents-in-suit. Soverain has the burden of proving infringement by a preponderance of the evidence.

Only the claims of a patent can be infringed. You must consider each claim individually. You must compare each of the asserted claims, as I have defined them, to the accused methods and systems used by Newegg's websites, and determine whether or not there is infringement. You must not compare the accused systems or methods with any specific example set out in the patents.

Soverain has alleged that Newegg infringes the asserted claims both directly and indirectly. I will now explain each of the types of infringement in more detail.

4.1 Direct Infringement

If any person makes, uses, sells, or offers to sell what is covered by the claims of a patent without the patent owner's permission, that person is said to infringe the patent. This type of infringement is called direct infringement.

A patent claim is directly infringed only if the accused system or method includes each and every element in that patent claim. If you find that the accused system or method includes each element or step of the claim, then that system or method infringes the claim even if such system or method contains additional elements or steps that are not recited in the claim. If the accused system or method does not contain one or more of the limitations recited in a claim, then that system or method does not directly infringe that claim. An accused system infringes a claim if it is reasonably capable of satisfying the claim elements, even though it may also be capable of non-infringing modes of operation.

Direct infringement requires a party to perform or use each and every step of a claimed method, literally or under the doctrine of equivalents. Where no one party performs all of the steps of a claimed method but multiple parties combine to perform every step of the method, that claim will nevertheless be directly infringed if one party exercises control or direction over the entire method so that every step is attributable to the controlling party. Mere arms-length cooperation between the parties is not enough to establish direct infringement.

A person can directly infringe a patent without knowing that what it is doing is an infringement of the patent. It may also directly infringe even though in good faith it believes that what it is doing is not an infringement of any patent and even if it did not know of the patent. Infringement does not require proof that the person copied a product or the patent.

A claim limitation may be directly infringed in one of two ways: either literally or under the doctrine of equivalents.

4.1.1 Literal Infringement

A claim limitation is literally met if it exists in the accused system or method just as it is described in the claim language, either as I have explained that language to you or, if I did not explain it, as it would be understood by one of skill in the art.

4.1.2 Doctrine of Equivalents

A claim limitation is present in an accused system or method under the doctrine of equivalents if the differences between the claim limitation and a comparable element of the accused system or method are insubstantial. One way to determine whether a difference is insubstantial is to look at whether the element of the accused system or method performs substantially the same function in substantially the same way to achieve substantially the same result as the element recited in the patent claim.

You may also consider whether, at the time of the alleged infringement, a person having ordinary skill in the field of technology of the patent would have known of the interchangeability of the alternative feature and the unmet requirement of the claim.

The interchangeability of the two features must have been known to persons of ordinary skill in the field of technology at the time the infringement began.

Thus, the inventor need not have foreseen and the patent need not describe all potential equivalents to the invention covered by the claims. Also, slight changes in technique or improvements made possible by technology developed after the patent application is filed may still be considered equivalent for the purposes of the doctrine of equivalents.

4.2 Active Inducement of Infringement

Soverain alleges that Newegg is also liable for infringement by actively inducing others to directly infringe claims 35 and 51 of the '314 patent and claims 17, 41, and 61 of the '492 patent.

As with direct infringement, you must determine whether there has been active inducement on a claim-by-claim basis.

A person is liable for active inducement of a claim only if:

- (1) the person takes action during the time the patent is in force which encourages acts by someone else; and
- (2) the encouraged acts constitute direct infringement of that claim; and
- (3) the person is aware of the patent, and knows or should have known that the encouraged acts constitute infringement of that patent; and
- (4) the person has an intent to cause the encouraged acts; and
- (5) the encouraged acts are actually carried out by someone else.

In order to prove active inducement, Soverain must prove that each of these requirements is met by a preponderance of the evidence.

Intent to cause the acts that constitute direct infringement may be demonstrated by evidence of active steps taken to encourage direct infringement, such as advertising an infringing use or instructing how to engage in an infringing use. In order to establish active inducement of infringement, it is not sufficient that Newegg was aware of the act(s) that allegedly constitute the direct infringement. Rather, you must find specifically that Newegg intended to cause the acts that constitute the direct infringement and must have known or should have known that its action would cause the direct infringement. If you do not find that Newegg specifically meets these intent requirements, then you must find that Newegg has not actively induced the alleged infringement.

5. INVALIDITY

Newegg has challenged the validity of the '314, '492, and '639 patent claims. Newegg must prove that a patent claim is invalid by clear and convincing evidence. An issued patent is afforded a presumption of validity based on the presumption that the United States Patent and Trademark Office acted correctly in issuing a patent.

The "effective filing date" of an application is generally the date that the application was actually filed at the U.S. Patent Office, but in instances with continuation applications, the effective filing date can be earlier. A continuation application is an application filed during the pendency of a parent application that claims inventions that were disclosed in the parent application and claims the priority date of the parent application. A claim of priority means that the continuation application is claiming entitlement to the same filing date as the parent application, such that the continuation is treated as if it were filed on the same day as the parent application. The date that the parent application was filed is the "effective filing date" even though the application may have been filed months or years later. The effective filing date determines whether certain items constitute

prior art that can be used to invalidate a patent. Here, the '639 patent application was filed as a continuation of the '780 patent and claims priority to the '780 patent.

I will now explain to you Newegg's grounds for invalidity in detail. In making your determination as to invalidity, you should consider each claim separately.

5.1 Anticipation for Lack of Novelty

A patent claim is invalid if the claimed invention is not new. For a claimed invention to be invalid on the basis of anticipation because it is not new, all of its elements must be in a single previous device or method, or described in a single previous publication or patent. These items are called "prior art references." You may not combine two or more items of prior art to prove anticipation. Newegg must prove by clear and convincing evidence that the various claims of the patents-in-suit are anticipated by a single item of prior art.

The disclosure in a prior art reference does not have to be in the same words as the claim, but all the elements of the claim must be there, either stated expressly or necessarily implied or inherent in the level of ordinary skill in the field of technology of the patent at the time of the invention, so that someone of ordinary skill in the field of technology of the patent looking at that one prior art reference would be able to make and use the claimed invention. Something is inherent in an item of prior art if it is always present in the prior art or always results from the practice of the prior art, and if a skilled person would understand that to be the case. Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may coincidentally result from a given set of circumstances is not sufficient.

I will now explain the different ways in which Newegg can show that the various claims of the patents-in-suit are not new.

5.1.1 Anticipation by Printed Publication or Prior Patent

A patent claim is invalid if the invention defined by that claim was described in a printed publication or patented in the United States or foreign country before it was invented by the patent applicant, or more than one year prior to the effective filing date of the United States patent application. Printed publications may include issued patents.

A printed publication or patent will not be an anticipating prior art reference unless it contains a description of the invention covered by the patent claims that is sufficiently detailed to enable one of ordinary skill in the field of technology to practice the invention without undue experimentation. Factors to be considered in determining whether a disclosure would require undue experimentation include:

- (1) the quantity of experimentation necessary;
- (2) the amount of direction or guidance disclosed in the patent or publication;
- (3) the presence or absence of working examples in the patent or publication;
- (4) the nature of the invention;
- (5) the state of the prior art;
- (6) the relative skill of those in the field of the technology;
- (7) the predictability of the art; and
- (8) the breadth of the claims.

A printed publication must be reasonably accessible to those members of the public who would be interested in its contents. It is not necessary that the printed publication be available to every member of the public. So long as the printed publication was available to the public, the form in which the information was recorded is unimportant. The information must, however, have been

maintained in some permanent form, such as printed or typewritten pages, magnetic tape, microfilm, photographs, or photocopies.

A United States patent that was filed before the inventors of the patents-in-suit invented one of their claimed inventions is prior art with respect to those claimed inventions as of the date the United States patent was filed. In other words, a U.S. Patent can be prior art as of its filing date if it was filed before the inventors of the patents-in-suit invented their inventions, even if the patent did not actually publish or issue until after the inventors invented their inventions.

5.1.2 Anticipation by Public Knowledge or Use by Another

A patent claim is invalid if the invention recited in that claim was publicly known or used in the United States by someone other than the inventor before the patent applicant invented it, or more than one year before the effective filing date of the United States patent application.

Private or secret knowledge, such as knowledge confidentially disclosed within a small group, is not enough to invalidate a patent claim. A prior public use by another may anticipate a patent claim, even if the use was accidental or was not appreciated by the other person. Thus, a prior public use may anticipate an invention even if the user did not intend to use the invention, or even realize he or she had done so.

5.1.3 Anticipation by Prior Invention

A patent claim is invalid if the invention defined by that claim was invented by another person in the United States before it was invented by the patentee, and that other person did not abandon, suppress or conceal the invention.

As a general rule, the first person to reduce an invention to practice is said to be the first inventor. An invention is reduced to practice either when a patent application is filed or when the invention is made and shown to work for its intended purpose. Thus, if another person reduces to

practice an invention before the inventor on the patent, then the reduction to practice by the other person will be prior art to the patent claims.

A patentee who is not the first to reduce to practice can still be the first to invent if he can show two things:

- (1) that he conceived of the invention before the other party conceived of his invention; and
- (2) that he exercised reasonable diligence in reducing his invention to practice, from the time just before the other party conceived, to the time he reduced to practice.

Conception is the mental part of an inventive act, i.e., the formation in the mind of the inventor of a definite and permanent idea of the complete and operative invention as it is to be applied in practice.

Reasonable diligence means that the inventor worked continuously in the United States on reducing the invention to practice. Interruptions necessitated by the everyday problems and obligations of the inventor or those working with him or her do not prevent a finding of diligence.

5.2 Corroboration of Oral Testimony

Oral testimony alone is insufficient to prove prior invention or that something is prior art. A party seeking to prove prior invention or prior art also must provide evidence that corroborates any oral testimony, especially where the oral testimony comes from an interested witness, or a witness testifying on behalf of an interested party. This includes any individual or company testifying that his invention or its invention predates the patents-in-suit. Documentary or physical evidence that is made contemporaneously with the inventive process by someone other than the alleged prior inventor provides the most reliable proof that the alleged prior art inventor's testimony has been corroborated. For any oral testimony that a party has put forth alleging that a particular event or reference occurred before the filing date of the patents-in-suit, that party must also have provided

some sort of corroborating evidence that agrees with that oral testimony. If you find the party has not corroborated the oral testimony with other evidence, you are not permitted to find that the subject of that oral testimony qualifies as prior art or supports a prior date of invention.

If evidence is presented for purposes of attempting to corroborate oral testimony, then you must determine whether this evidence does, in fact, properly corroborate the oral testimony. In making this determination, you should consider the following factors:

- (1) The relationship between the corroborating witness and the alleged prior user;
- (2) The time period between the event and this trial;
- (3) The interest of the corroborating witness in the subject matter of this suit;
- (4) Contradiction or impeachment of the witness's testimony;
- (5) Extent and detail of the corroborating witness's testimony;
- (6) The witness's familiarity with the subject matter of the patented invention and the alleged prior use;
- (7) Probability that a prior use could occur considering the state of the art at the time; and
- (8) Impact of the invention on the industry, and the commercial value of its practice.

6. DAMAGES

I have now instructed you as to the law governing Soverain's claims of patent infringement and Newegg's claims of invalidity. If you find that Newegg has infringed a claim of the '314, '492, or '639 patent, then you must determine what damages Newegg must pay to Soverain for that infringement. If, on the other hand, you find that Newegg has not infringed a claim of the '314, '492, or '639 patent, then Soverain is not entitled to any damages, and you should not make any findings about damages for that claim.

The fact that I am instructing you about damages does not mean that Soverain is or is not entitled to recover damages. You should not interpret the fact that I have given instructions about Soverain's damages as an indication any way that I believe that Soverain should, or should not, win this case. I am instructing you on damages only so that you will have guidance in the event you decide that Newegg is liable and that Soverain is entitled to recover money from Newegg.

6.1 Date Damages Begin

In considering damages, the time period is November 2, 2007, to the present. It is undisputed that Soverain cannot recover any damages for any infringement of the patents-in-suit before November 2, 2007.

6.2 Reasonable Royalty – Generally

The patent laws specifically provide that the amount of damages that Newegg must pay Soverain for infringing Soverain's patents may not be less than a reasonable royalty for the use that Newegg made of Soverain's inventions.

A royalty is a payment made to the owner of a patent by a non-owner in exchange for rights to use the claimed invention. The royalty payment generally reflects the value of the use of the claimed invention. A reasonable royalty is the royalty that would have resulted from a hypothetical arms-length negotiation between Soverain's predecessor Open Market, and a company in the position of Newegg on the eve of infringement, with both sides to this negotiation willing to enter into a license and both sides to this negotiation operating under the assumptions that the patents are valid, the patents are infringed, and the licensee would respect the patents.

You are to decide what a reasonable royalty would be, based on circumstances as of the time just before Newegg began selling or using the patented inventions. You may consider any actual

profits made by Newegg and any commercial success of the patented inventions, but the amount of those profits is not determinative on the issue of what is a reasonable royalty.

Although the relevant date for the hypothetical reasonable royalty negotiation is the date that the infringement began, you may consider in your determination of reasonable royalty damages any evidence with respect to the expectations for the future that the negotiators had as of the eve of infringement and any actual profits by Newegg after that time, and any commercial success of the patented invention in the form of sales of the patents or infringing product after that time. You may only consider this information, however, if it was foreseeable at the time the infringement began.

Soverain has the burden to prove by a preponderance of the evidence that it suffered the damages it seeks. While Soverain is not required to prove damages with mathematical precision, it must prove its damages with reasonable certainty. Soverain is not entitled to damages that are speculative. Soverain's proof of damages must have a sound economic basis.

6.3 Reasonable Royalty – Factors

In deciding what is a reasonable royalty, you may consider the factors that Soverain and Newegg would consider in setting the amount Newegg should pay. I will list for you a number of factors you may consider. This is not every possible factor, but it will give you an idea of the kinds of things to consider in setting a reasonable royalty.

- (1) Any royalties received by Soverain or its predecessors for the licensing of the patents-in-suit, proving or tending to prove an established royalty.
- (2) Any rates paid by Newegg for the use of other patents comparable to the patents-in-suit.
- (3) The nature and scope of the license, as exclusive or nonexclusive; or as restricted or unrestricted in terms of territory, or with respect to the parties to whom the product may be sold.

- (4) Whether or not Soverain or any of its predecessors had an established policy and marketing program to maintain its patent exclusivity by not licensing others to use the inventions or by granting licenses under special conditions designed to preserve that exclusivity.
- (5) The commercial relationship between the licensor and licensee, such as whether they are competitors in the same territory and the same line of business.
- (6) The effect of selling the patented inventions in promoting sales of other products or inventions of Newegg; the existing value of the inventions to Soverain as a generator of sales of its non-patented items; and the extent of such derivative or convoyed sales.
- (7) The duration of the patent and the term of the hypothetical license.
- (8) The established profitability of the inventions; their commercial success; and their current popularity.
- (9) The utility and advantages of the patented inventions over the old modes or devices, if any, that had been used for achieving similar results.
- (10) The nature of the patented inventions, the character of the commercial embodiment of the inventions as owned and produced by Soverain, and the benefits to those who have used the inventions.
- (11) The extent to which Newegg has made use of the patented inventions and any evidence that shows the value of that use.
- (12) The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the inventions or analogous inventions.
- (13) The portion of the profits that is due to the patented inventions, as compared to the portion of the profit due to other factors, such as unpatented elements or unpatented manufacturing processes, or features or improvements developed by Newegg.
- (14) Expert opinions as to what a reasonable royalty would be.
- (15) The amount that a licensor such as Open Market and a licensee such as Newegg would have agreed upon if both parties had been reasonably and voluntarily trying to reach an agreement.

In addition, it is proper for you to consider any economic or business factors that normally prudent business people would, under similar circumstances, reasonably take into consideration in negotiating the hypothetical license.

6.4 Non-Infringing Alternatives

In determining a reasonable royalty, you may consider whether or not Newegg had commercially acceptable non-infringing alternatives to taking a license from Open Market that were available at the time of the hypothetical negotiation and whether that would have affected the reasonable royalty the parties would have agreed upon.

7. INSTRUCTIONS FOR DELIBERATIONS

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because the others think differently, or merely to finish the case.

Remember that in a very real way you are the judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case. You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life.

When you retire to the jury room to deliberate on your verdict, you may take this charge with you as well as exhibits which the Court has admitted into evidence. Select your Foreperson and conduct your deliberations. If you recess during your deliberations, follow all of the instructions that the Court has given you regarding your conduct during the trial. After you have reached your verdict, your Foreperson is to fill in on the form your answers to the questions. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me. You must never disclose to anyone, not even to me, your numerical division on any question.

Any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

If you want to communicate with me at any time, please give a written message or question to the bailiff, who will bring it to me. I will then respond as promptly as possible either in writing or by having you brought into the courtroom so that I can address you orally. I will always first disclose to the attorneys your question and my response before I answer your question.

After you have reached a verdict, you are not required to talk with anyone about the case unless the Court orders otherwise. You may now retire to the jury room to deliberate.

APPENDIX A - CLAIM CONSTRUCTION FOR PATENTS-IN-SUIT

U.S. Patent Nos. 5,715,314 and 5,909,492	
Claim Term, Phrase, or Clause	Court's Construction
A statement URL	A URL concerning a statement
Computer	A functional unit that can perform substantial computation, including numerous arithmetic operations, or logic operations without human intervention
Connected to	Having a link to . . . to send or receive data
Database	A collection of logically related data stored together in one or more computerized files
Document(s)	Any type of digital data
Hypertext link	A non-sequential web association which the user can use to navigate through related topics
Interconnected by a [computer network/public packet switched computer network]	To be connected by a [computer network/public packet switched computer network]
Message	A unit of information sent electronically
Modif[y] [the shopping cart in the shopping cart database]	To change [an instance of a shopping cart in a shopping cart database]
Payment message	A message relating to a payment for one or more products
Plurality of products added to . . . shopping cart / [Add a] plurality of respective products to a shopping cart / [add] . . . plurality of products to . . . shopping cart	Product identifiers which are added to an instance of a shopping cart in the shopping cart database / [add] identifiers of respective products to an instance of a shopping cart / [add] identifiers of products to an instance of a shopping cart
Product(s)	Anything that can be advertised, sold, and provided to a purchaser

U.S. Patent Nos. 5,715,314 and 5,909,492	
Claim Term, Phrase, or Clause	Court's Construction
Public packet switched computer network	A packet switched computer network, accessible by the public through communication common carriers to provide data transmission services. "Packet switching" means a message-delivery technique in which small units of information (packets) are relayed through stations in a computer network preferably along the best route available between the source and the destination. "Public data network" is a network established and operated by common carriers for the specific purpose of providing low error-rate data transmission services to the public.
Record[] . . . in a database	Store[] in a database
Shopping cart	A stored representation of a collection of products
Shopping cart computer	A computer processing data associated with one or more shopping carts
Shopping cart database	A database of stored representations of collections of products, where "database" means a collection of logically related data stored together in one or more computerized files
Shopping cart message	A message concerning a shopping cart
Statement document comprising the purchase transaction records	A document that includes purchase transaction records
To cause said[/the/a] payment message to be activated to initiate a payment transaction	To cause an action associated with said[/the/a] payment message to initiate a payment transaction
Transaction detail hypertext link	Hypertext link to transaction detail
Transmit[ting/ed]	To send information over a communications channel

U.S. Patent Nos. 7,272,639	
Claim Term, Phrase, or Clause	Court's Construction
A purchase request / a request to purchase	One or more messages requesting a purchase
Charging the user . . . according to the user information	Charging an account associated with the user according to the user information
Creating, responsive to the initial service request, the session identifier	Producing, in response to the initial service request, the session identifier
Forwarding . . . from the client to the server system	Sending . . . from the client to the server system
Fulfilling the purchase request based on the user information	Carrying out the purchase request based on the user information
Hypertext transfer protocol	Also known as HTTP, the client/server protocol used to access information on the World Wide Web
Initial service request	The first service request in a session
Returning	Sending back
Service request	A solicitation of services from a client to a server. A service request may entail the exchange of any number of messages between the client and the server
Session	A series of requests and responses to perform a complete task or set of tasks between a client and a server system
Session identifier	A text string that identifies a session
User identifier	A text string that identifies a user

U.S. Patent Nos. 7,272,639	
Claim Term, Phrase, or Clause	Court's Construction
Validating, at the server system, the appended session identifier / validating the session identifier appended to the service request	At the server system, determining the validity of the appended session identifier

APPENDIX B - GLOSSARY OF PATENT TERMS

The following are definitions for patent terms that you should use in this case.

Application – The initial papers filed by the applicant in the United States Patent and Trademark Office (also called the “Patent Office” or “PTO”).

Claims - Claims are the numbered sentences appearing at the end of the patent and define the invention. The words of the claims define the scope of the patent owner’s exclusive rights during the life of the patent.

Comprising – The beginning, or preamble, portion of each of the asserted independent claims uses the word “comprising.” “Comprising” means “including” or “containing.” A claim that uses the word “comprising” is not limited to systems or methods having only the elements that are recited in the claim elements, but also covers systems or methods that have all of the elements and add additional elements without changing the required elements. Take as an example a claim that covers a table. If the claim recites a table “comprising” a tabletop, legs and glue, the claim will cover any table that contains these structures, even if the table also contains other structures, such as a leaf or wheels on the legs. However, if a table contains a tabletop, legs, but no glue, then the claim does not cover the table.

Continuation – A continuation application is a second application for the same invention disclosed in a prior patent application and filed before the first application becomes patented. The continuation should not include anything which would constitute new matter if inserted in the original application. An amendment to the specification of the continuation application that clarifies an express or inherent disclosure of the original parent application does not constitute new matter.

File Wrapper – See “Prosecution History” below.

License – Permission to use the patented invention, which may be granted by a patent owner (or a prior licensee) in exchange for a fee called a “royalty” or other consideration.

Office Action – Communication from the patent examiner regarding the specification of the patent application and/or the claims pending in the patent application.

Ordinary Skill in the Art – From time to time in these instructions I will refer to a hypothetical person of “ordinary skill in the art” or a “person of ordinary skill in the field.” This hypothetical person is presumed to be aware of all of the prior art and knowledge that existed in the field during the relevant time period. The skill of the actual inventor and experts is irrelevant, because they may possess something that distinguishes them from workers of ordinary skill in the art. Factors to consider in determining the level of ordinary skill in the art include the educational level and experience of people working in the art, the types of problems faced by workers in the art and the solutions found to those problems, and the sophistication of the technology in the field.

Parent Application – The term “parent” is applied to an earlier application of the inventor disclosing an invention. A later application filed by the inventor may claim priority and relate back to the parent application with respect to an invention that was sufficiently disclosed in the parent application.

Patent Examiners – Personnel employed by the Patent Office who review (or examine) patent applications, each in a specific technical area, to determine whether the claims of a patent application are patentable and whether the disclosure adequately describes the invention.

Prior Art – Knowledge that is available to the public either prior to the invention by applicant or more than a year prior to the effective filing date of his/her patent application.

Prosecution History – The written record of proceedings in the Patent Office between the applicant and the Patent Office. It includes the original patent application and later communications between the Patent Office and the applicant. The prosecution history may also be referred to as the “File wrapper” of the patent during the course of this trial.

Reexamination – At any time during the enforceability of a patent any person may file a request for the Patent Office to conduct a second examination (the reexamination) of any claim of the patent on the basis of prior art patents or printed publications which that person states to be pertinent and applicable to the patent.

References – Any item of prior art used to determine patentability.

Said – The patent claims use the word “said” instead of “the.” Use of the word “said” in the beginning of a phrase indicates that it is referring to a previous use of the same or a similar phrase.

Specification – The specification is the information that appears in the patent and concludes with one or more claims. The specification includes the written text, the claims, and the drawings. In the specification, the inventor sets forth a description telling what the invention is, how it works, and how to make and use it so as to enable others skilled in the art to do so.



US005715314A

United States Patent [19][11] Patent Number: **5,715,314**

Payne et al.

[45] Date of Patent: **Feb. 3, 1998**[54] **NETWORK SALES SYSTEM**WO 91/16691 10/1991 WIPO G07F 7/10
WO 95/16971 6/1995 WIPO .[75] Inventors: **Andrew C. Payne**, Lincoln; **Lawrence C. Stewart**, Burlington; **David J. Mackie**, Cambridge, all of Mass.**OTHER PUBLICATIONS**Rivest, R.L. et al., "A Method for Obtaining Digital Signatures and Public-Key Cryptosystems," Laboratory for Computer Science, Massachusetts Institute of Technology, Cambridge, Massachusetts, no date.
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National Westminster Bank Group Brochure; pp. 1-29, no date.[73] Assignee: **Open Market, Inc.**, Cambridge, Mass.[21] Appl. No.: **328,133**[22] Filed: **Oct. 24, 1994**[51] Int. Cl.⁶ **H04L 9/00**[52] U.S. Cl. **380/24; 380/23; 380/25; 380/49; 380/50**[58] Field of Search **380/4, 21, 23, 380/24, 25, 49, 50; 364/401, 406, 408, 284.4; 235/379, 380; 395/200.01, 200.02, 200.09, 925**

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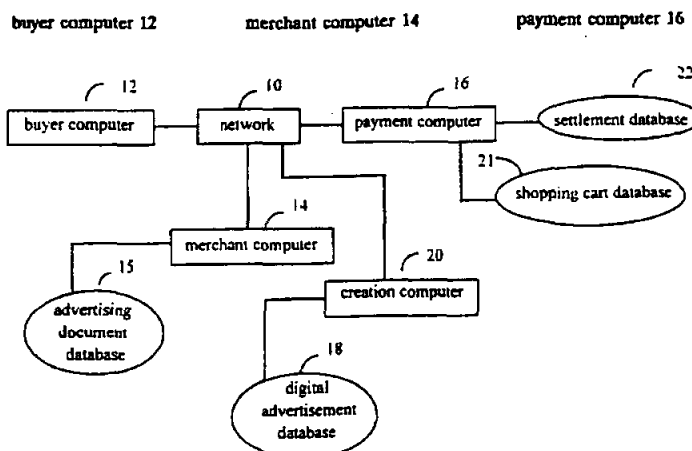
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2102606 2/1983 United Kingdom G07F 7/10[57] **ABSTRACT**

A network-based sales system includes at least one buyer computer for operation by a user desiring to buy a product, at least one merchant computer, and at least one payment computer. The buyer computer, the merchant computer, and the payment computer are interconnected by a computer network. The buyer computer is programmed to receive a user request for purchasing a product, and to cause a payment message to be sent to the payment computer that comprises a product identifier identifying the product. The payment computer is programmed to receive the payment message, to cause an access message to be created that comprises the product identifier and an access message authenticator based on a cryptographic key, and to cause the access message to be sent to the merchant computer. The merchant computer is programmed to receive the access message, to verify the access message authenticator to ensure that the access message authenticator was created using the cryptographic key, and to cause the product to be sent to the user desiring to buy the product.

48 Claims, 25 Drawing Sheets**Microfiche Appendix Included**
(1 Microfiche, 34 Pages)

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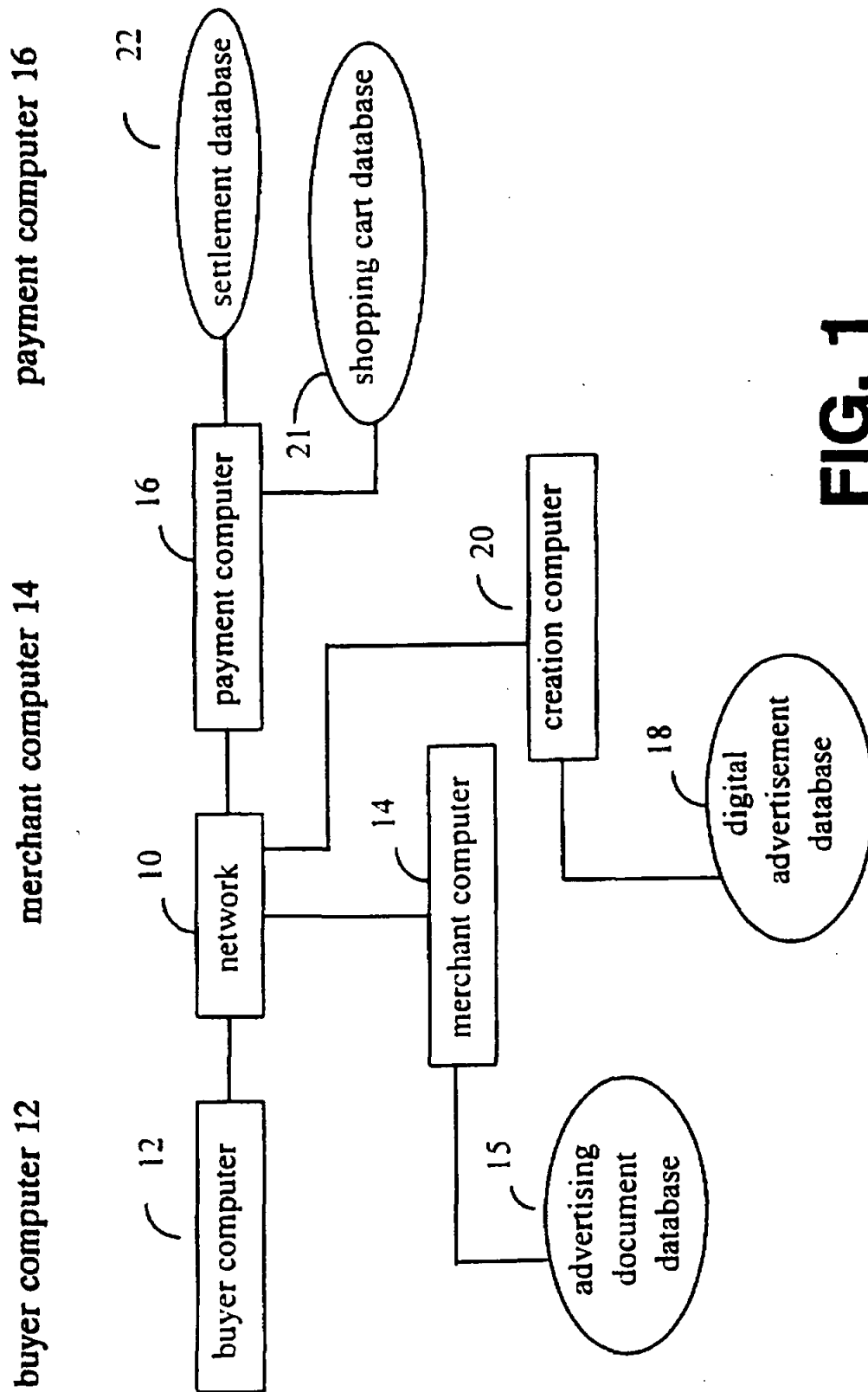
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**FIG. 1**

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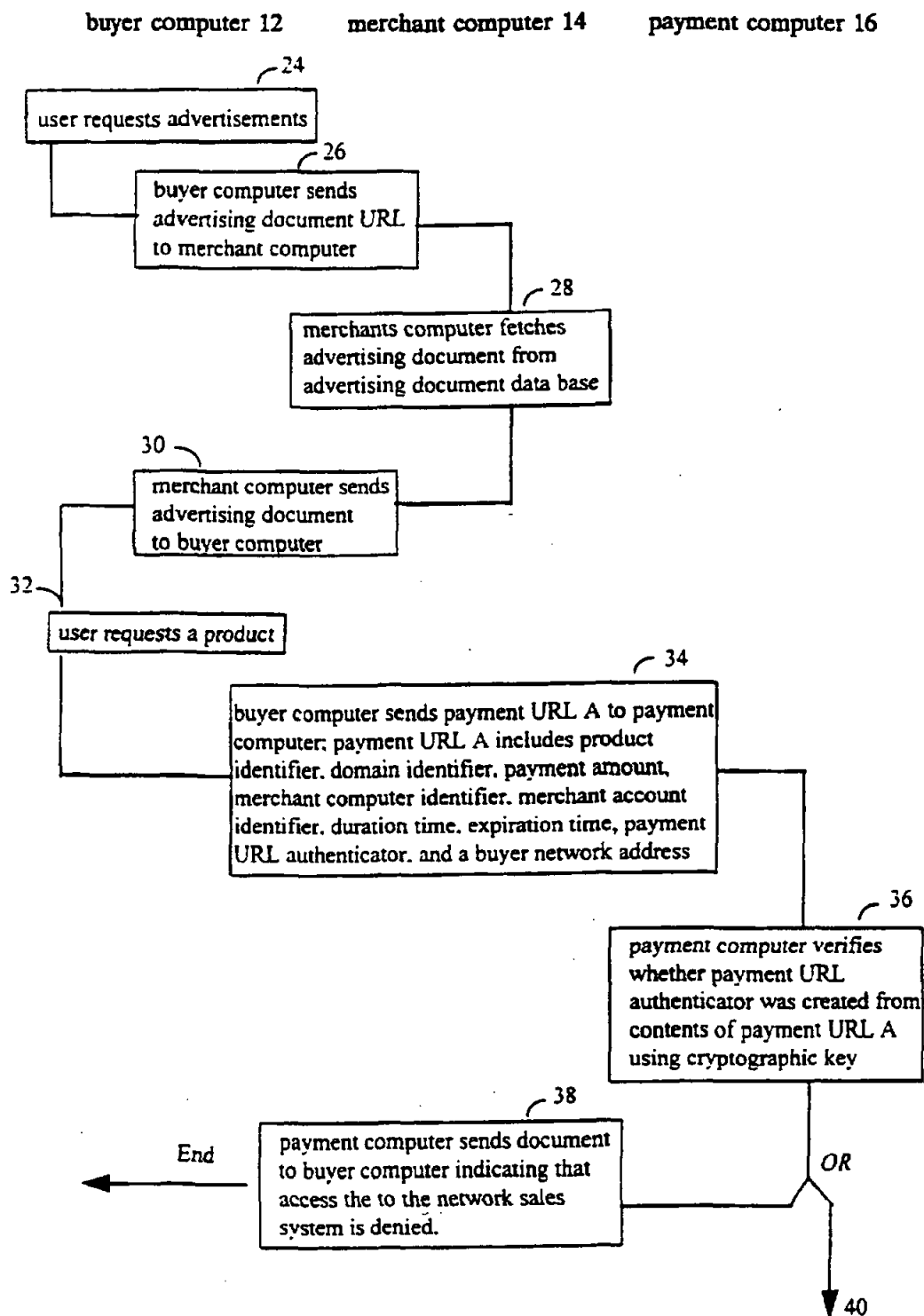


FIG. 2A

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buyer computer 12

merchant computer 14

payment computer 16

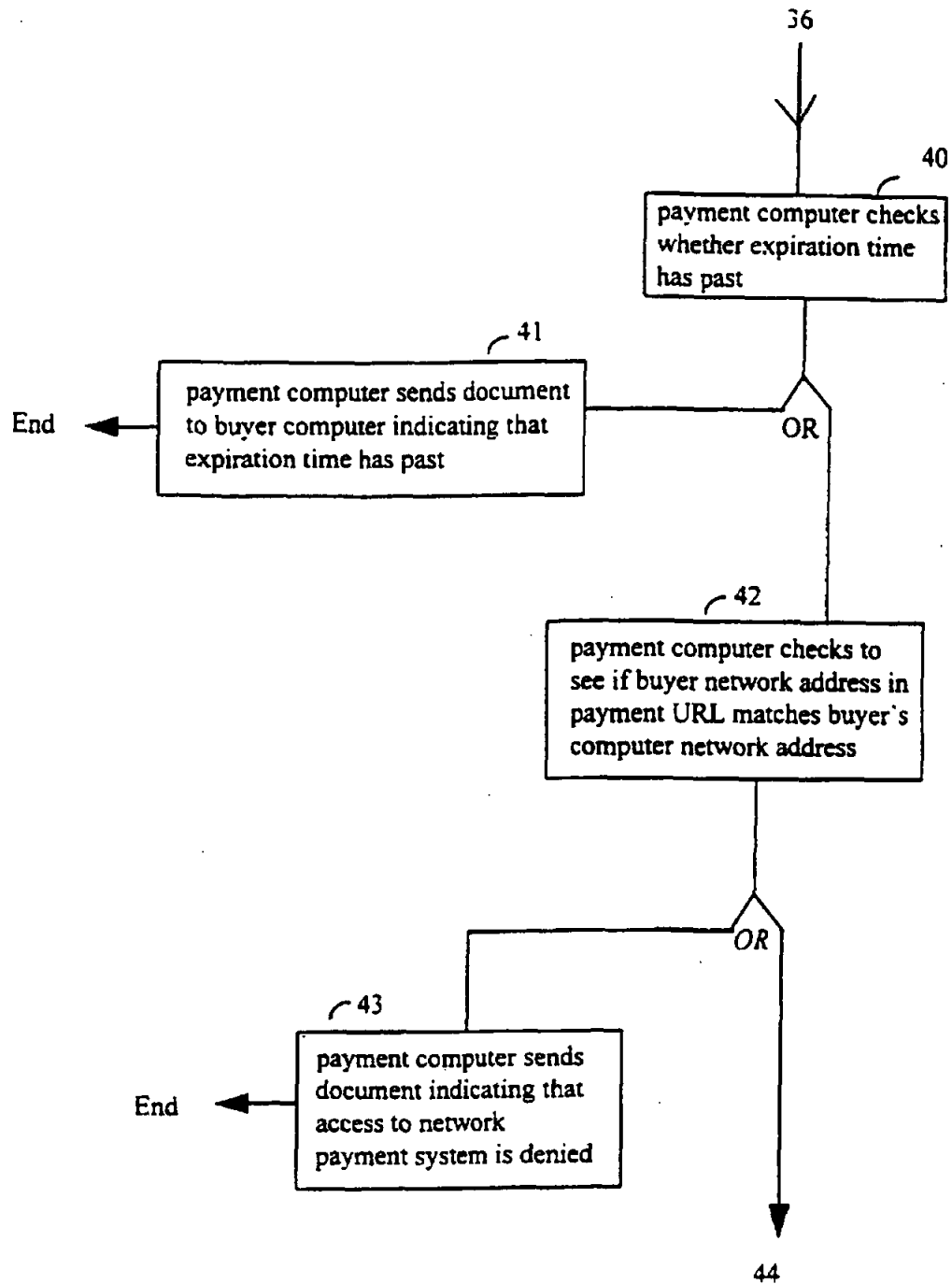


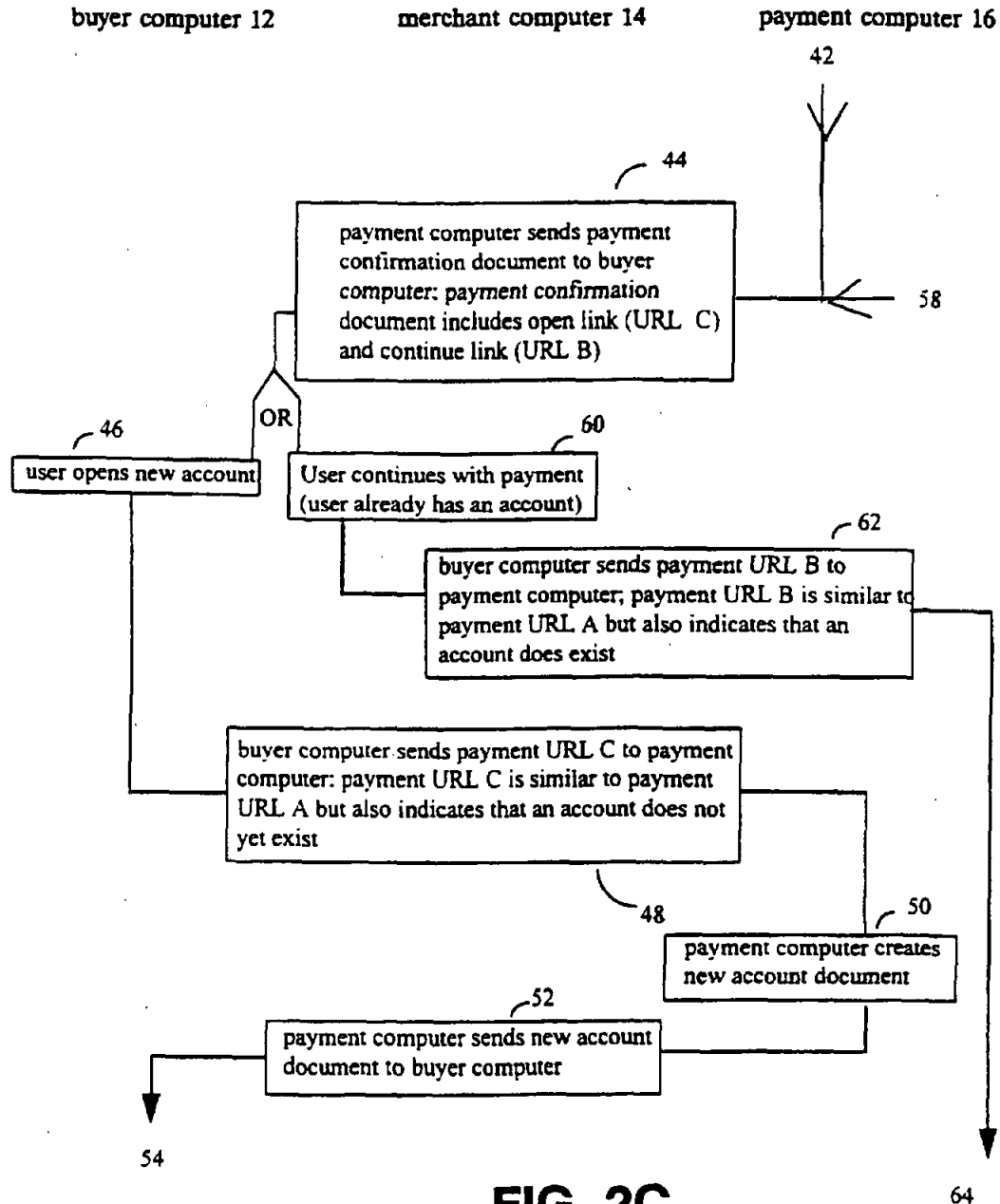
FIG. 2B

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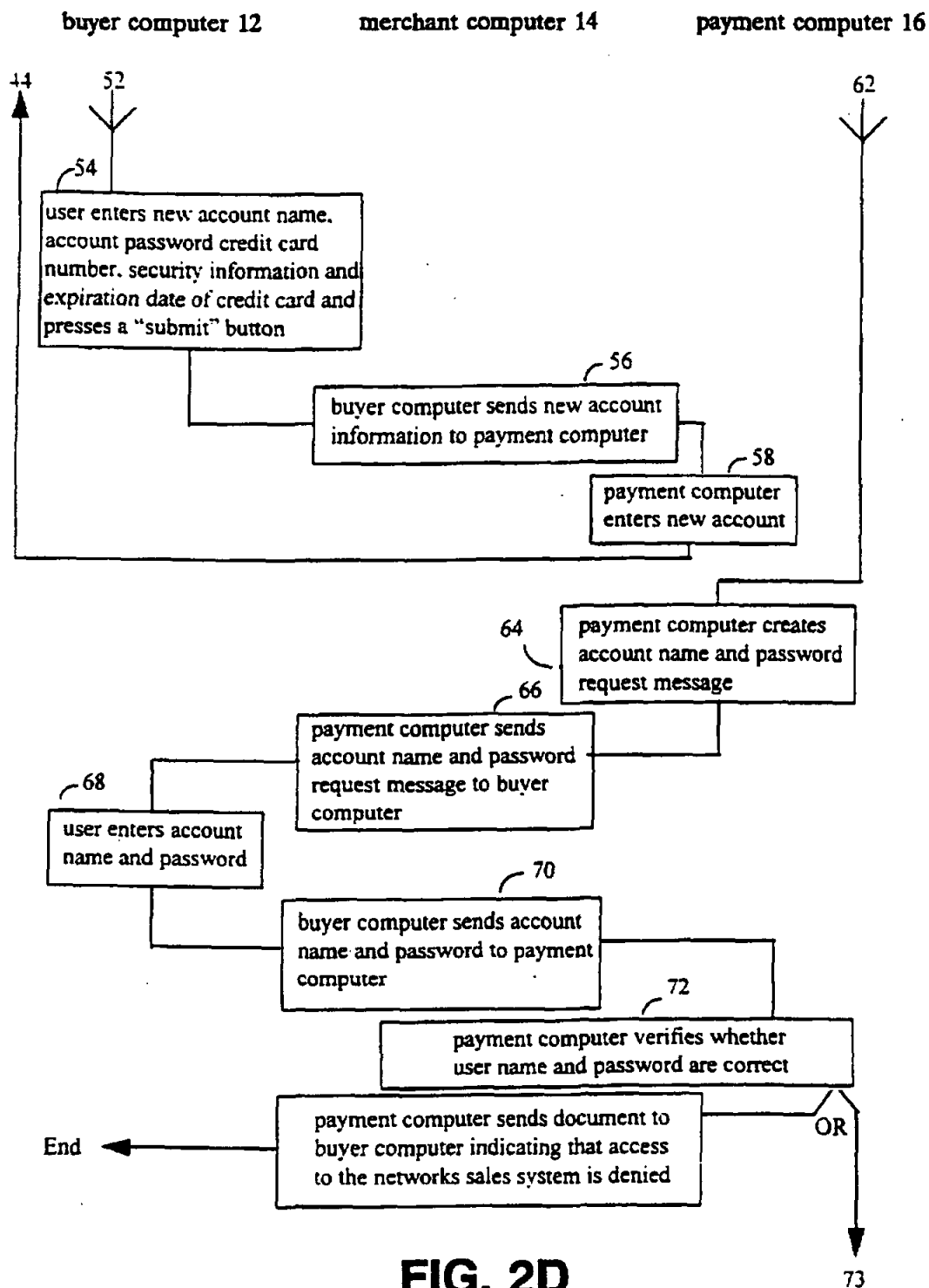


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buyer computer 12

merchant computer 14

payment computer 16

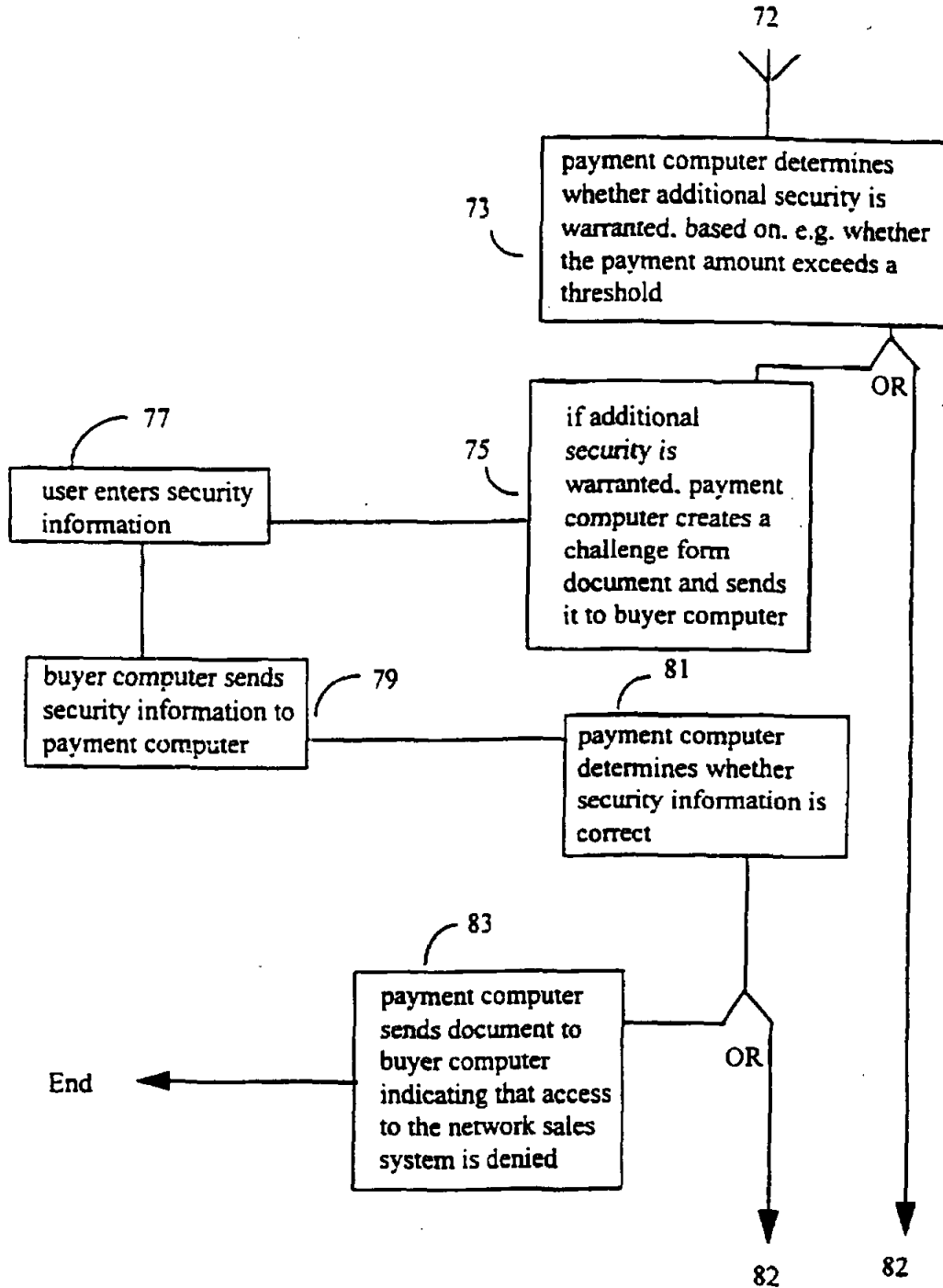


FIG. 2E

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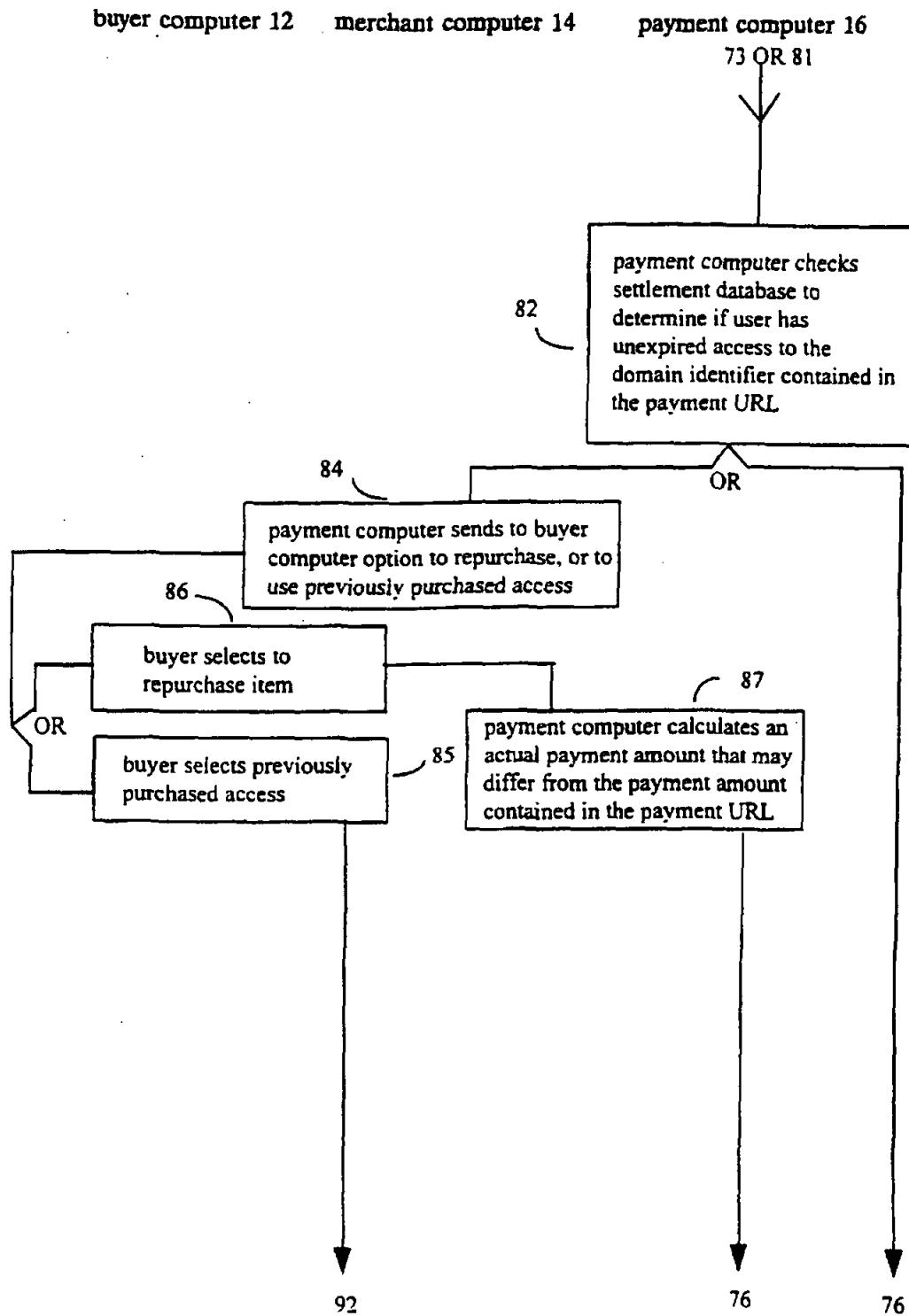


FIG. 2F

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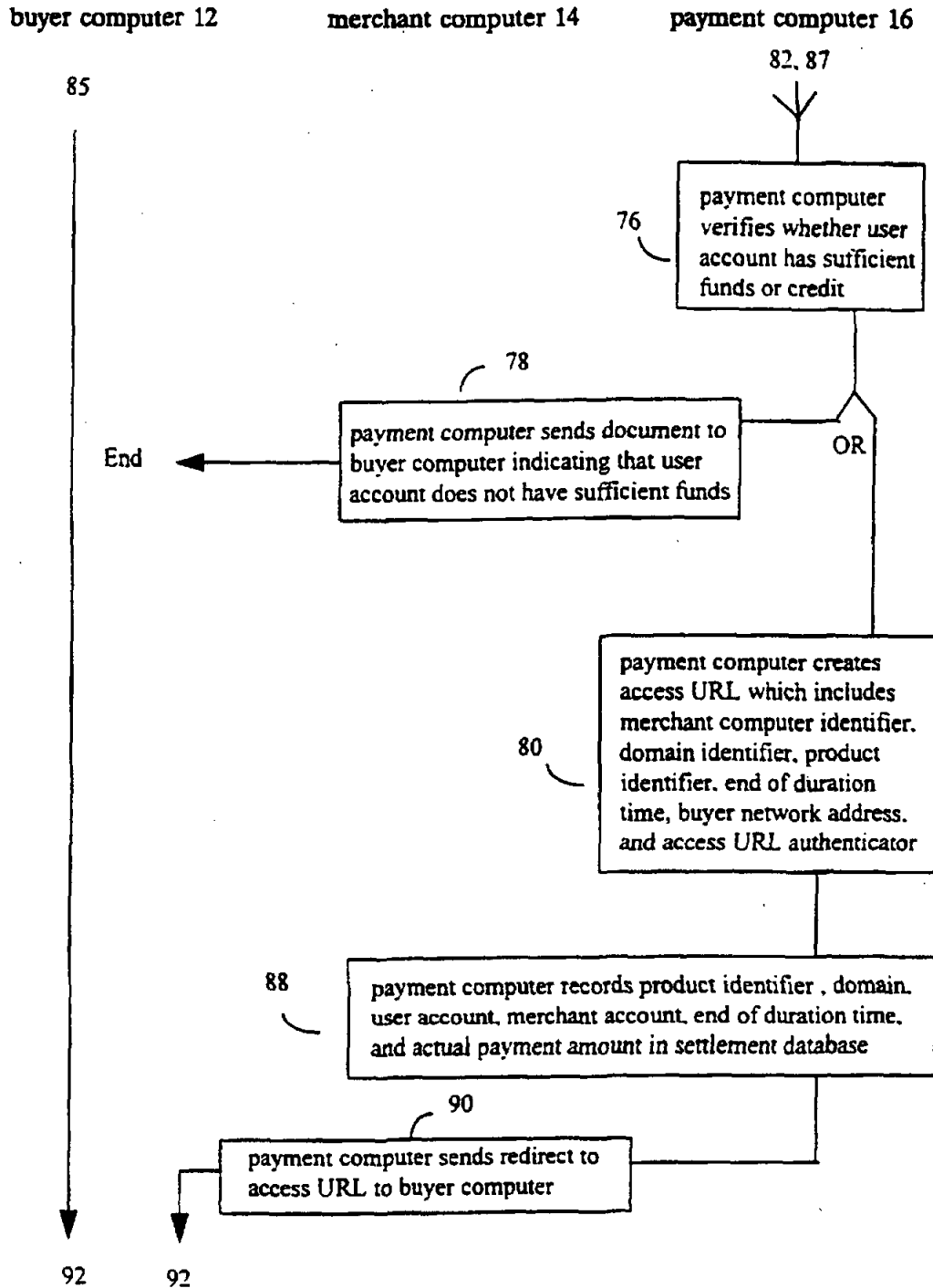


FIG. 2G

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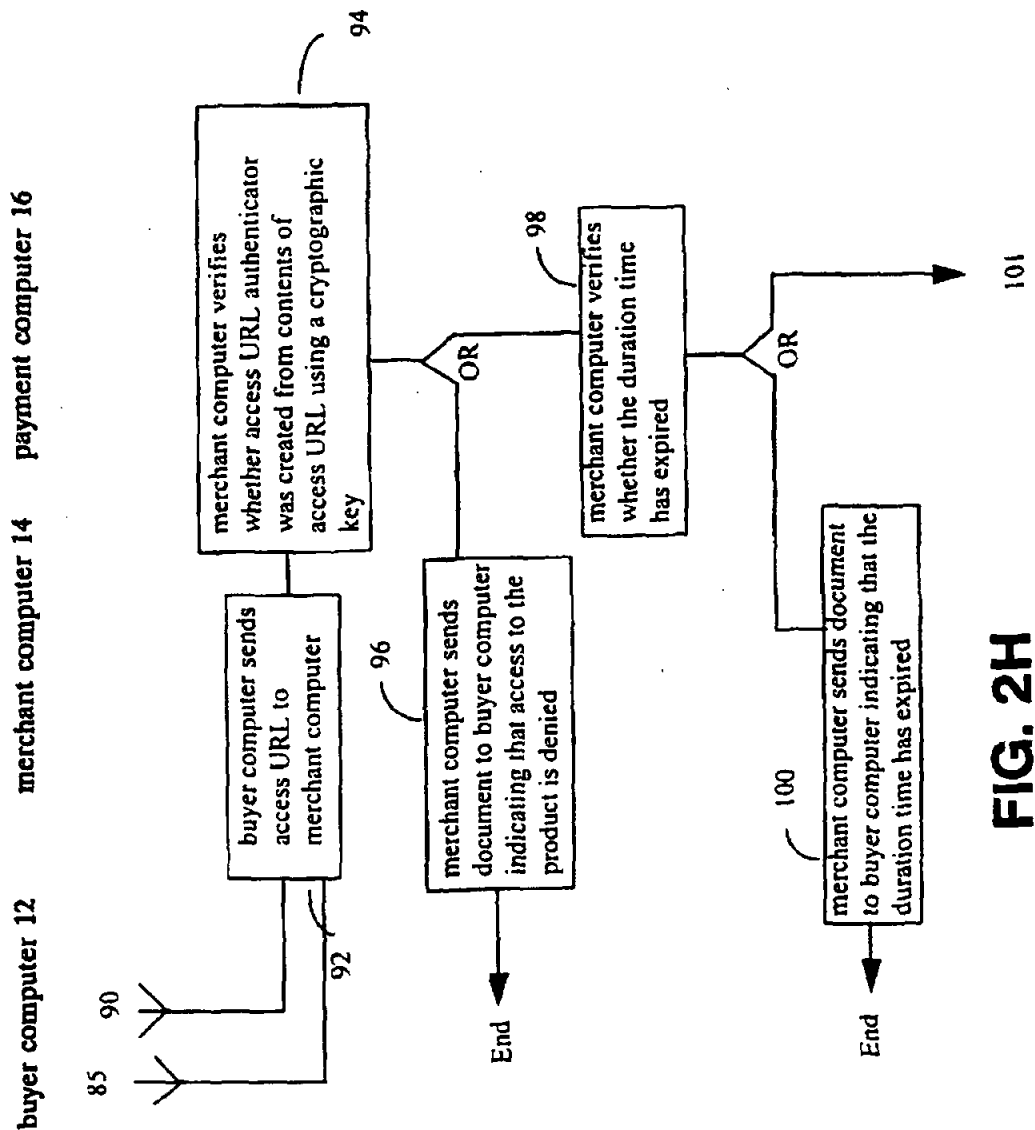


FIG. 2H

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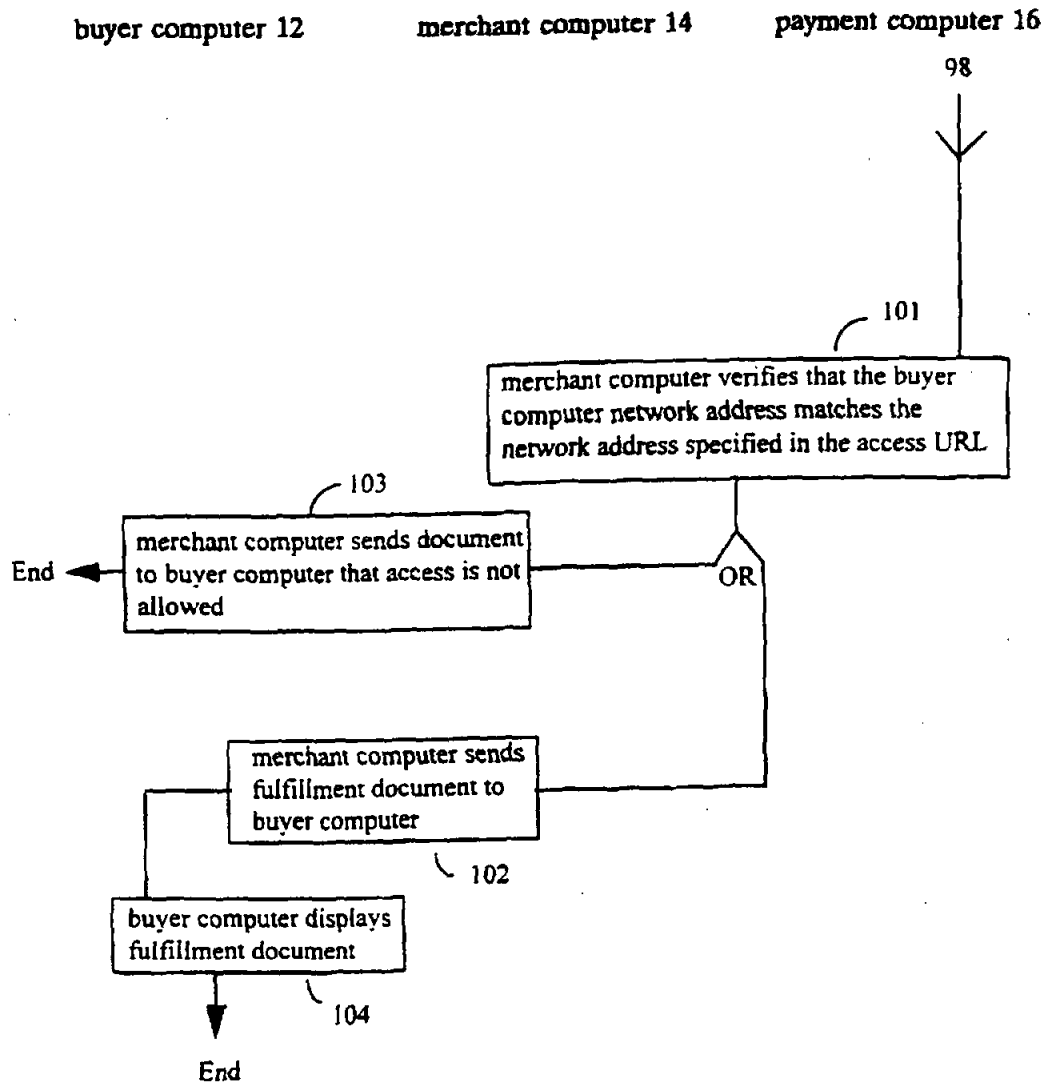


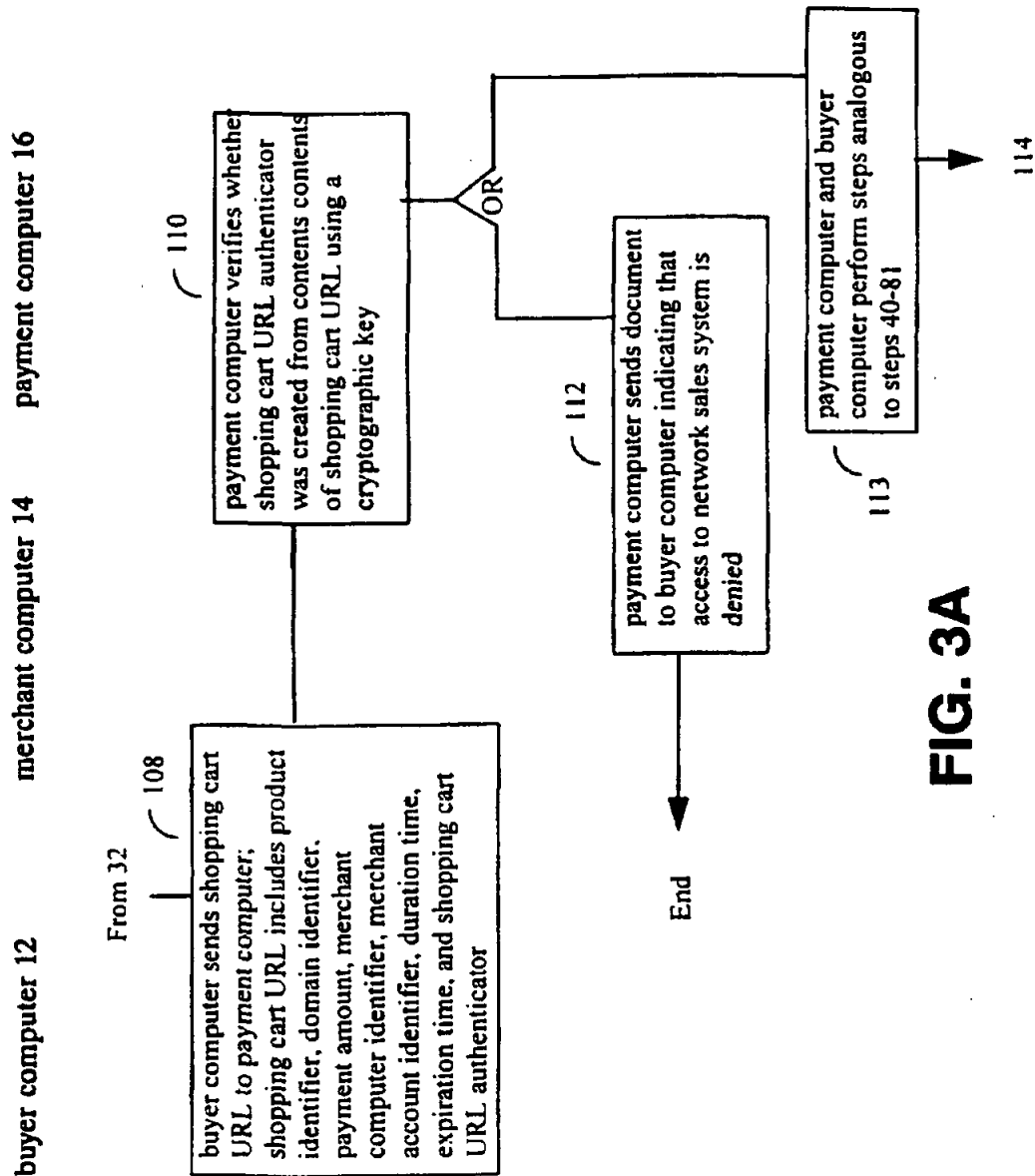
FIG. 21

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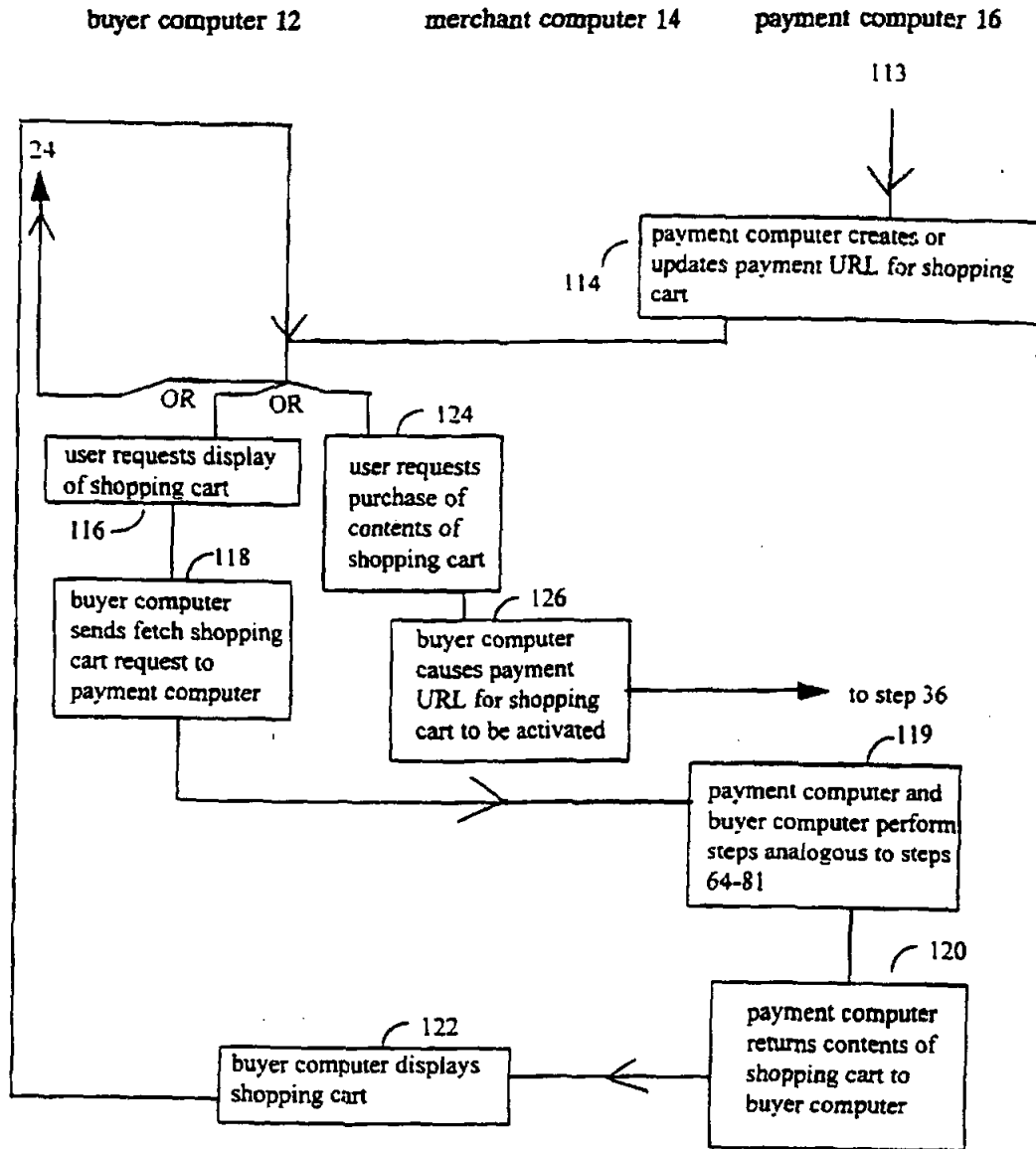


FIG. 3B

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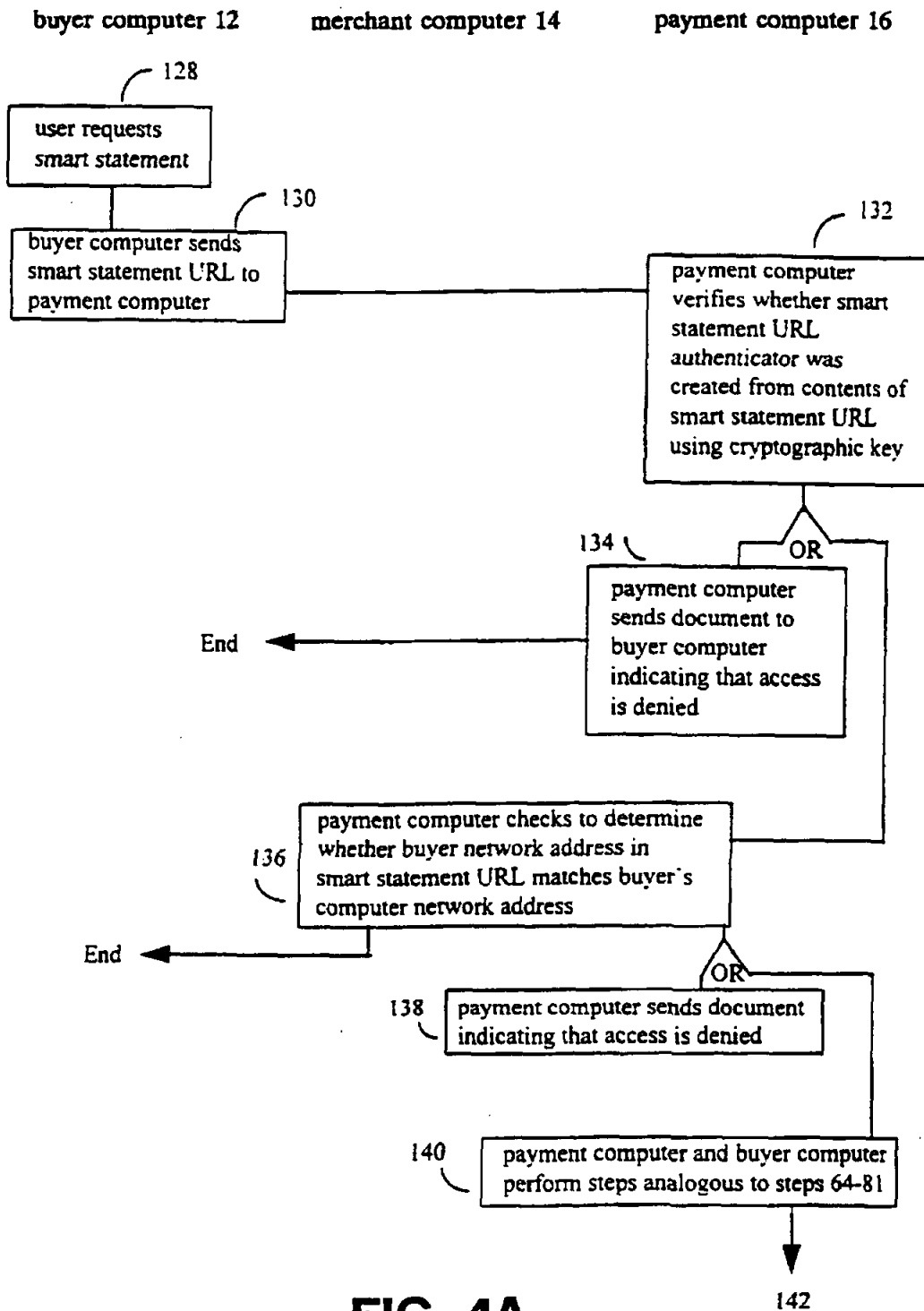


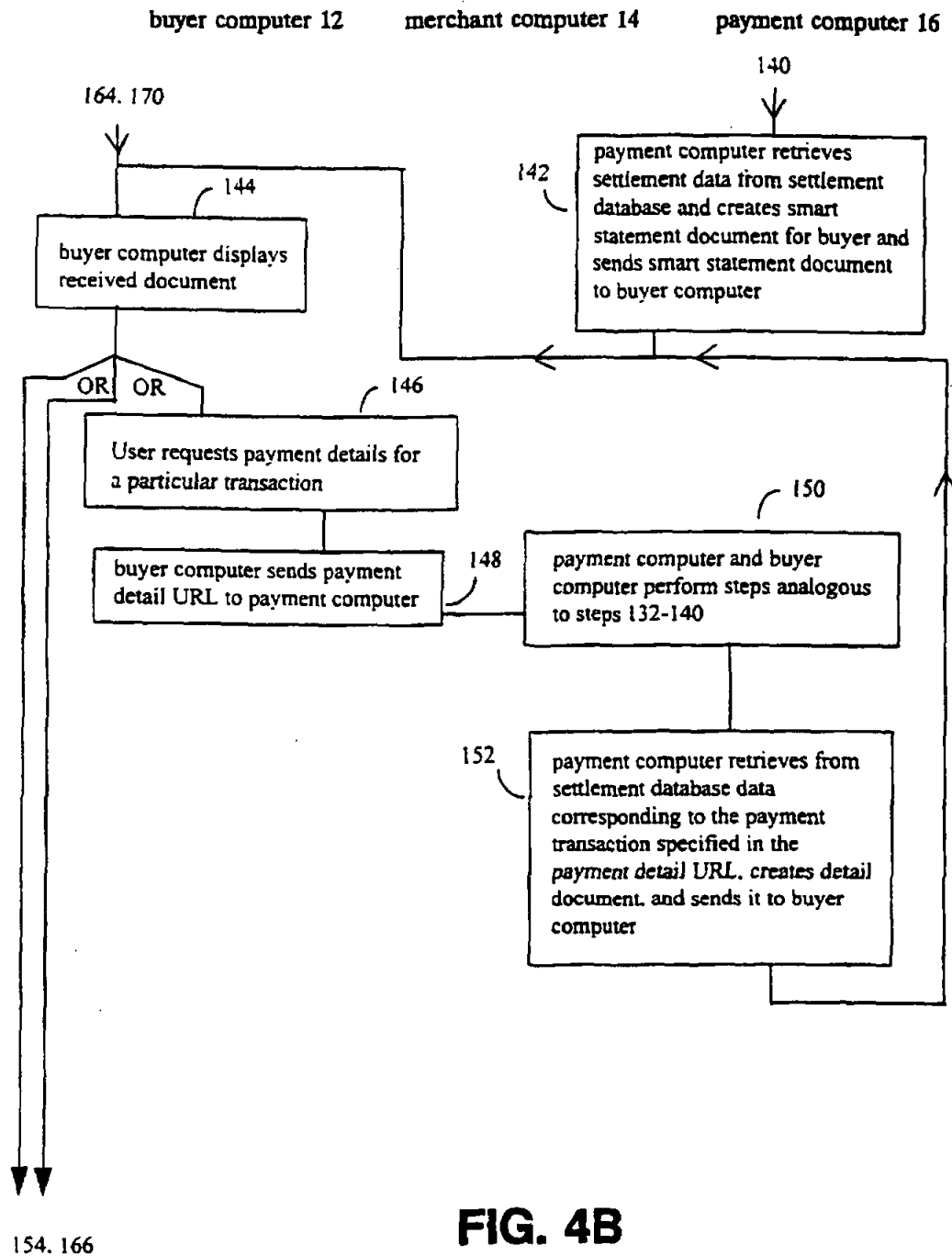
FIG. 4A

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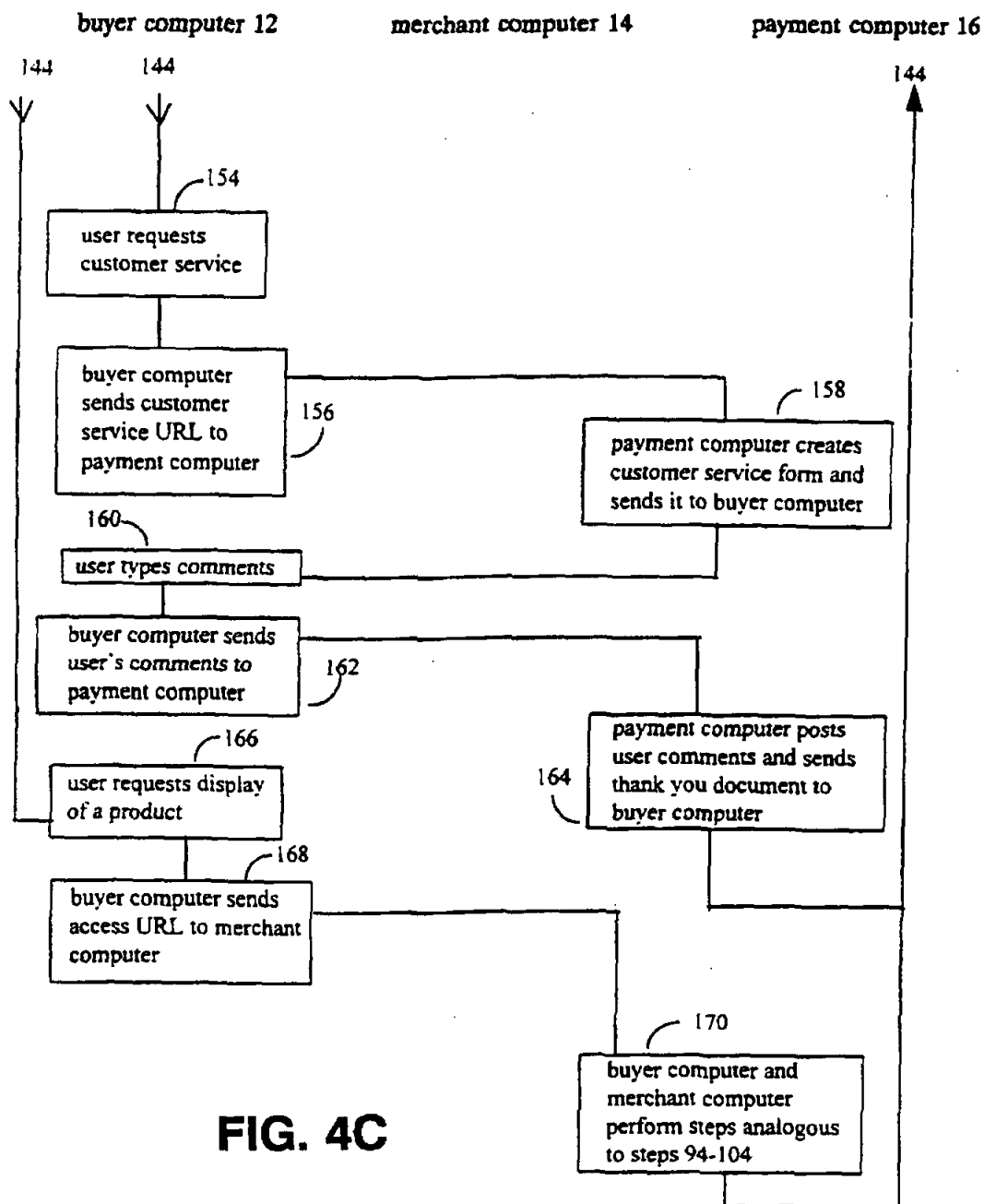


FIG. 4C

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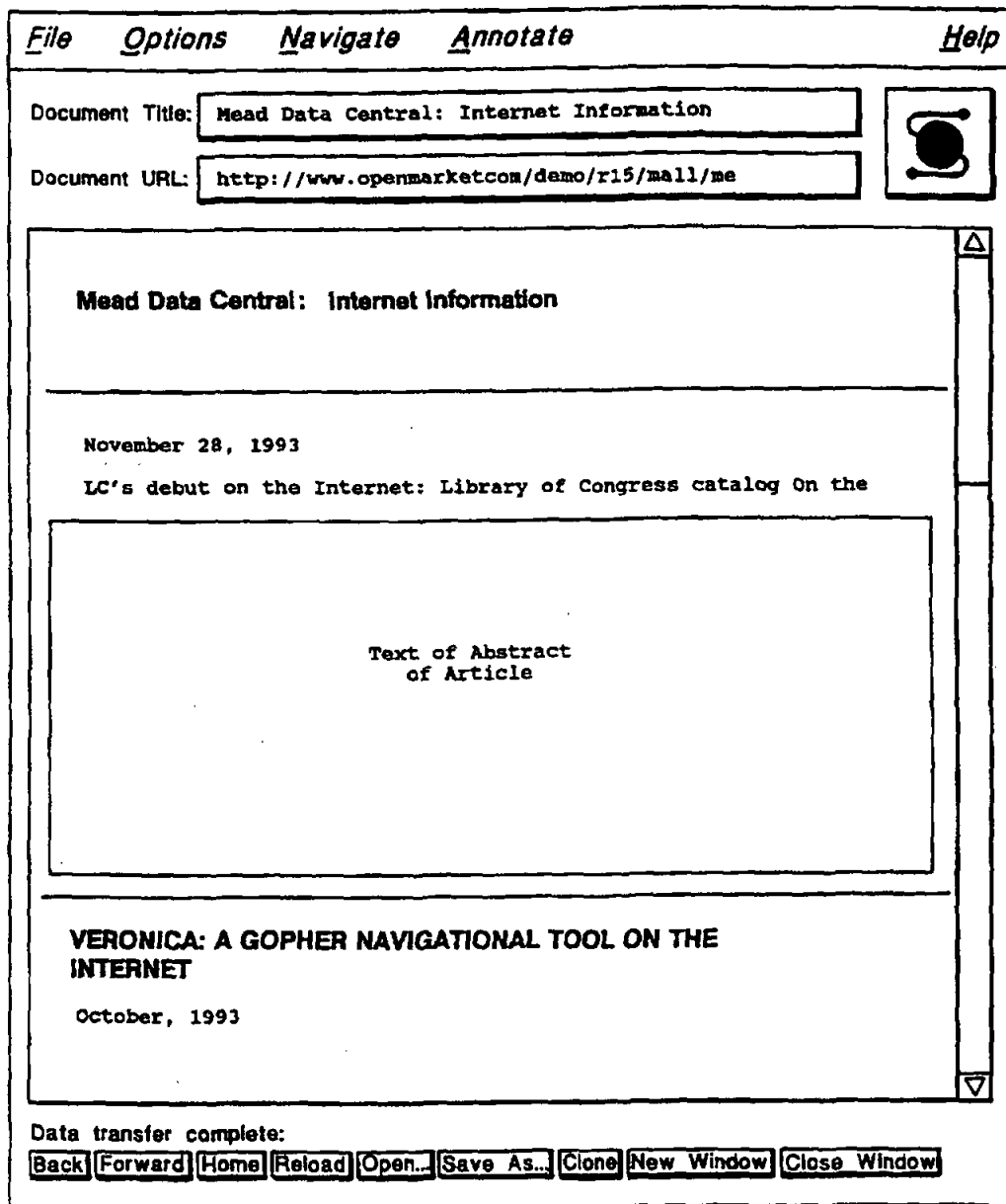


FIG. 5

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File Options Navigate Annotate Help

Document Title:

Document URL:



Open Market Payment

You have selected an item that requires payment

Merchant: Test Merchant
Description: Head Data Central Article
Amount: 2.85 (US currency)

If you have an Open Market account click on "continue" below and you will be prompted for your account name and password. If you do not have an account, you can establish one on-line and return to this page to continue your purchase.

an account on-line

with payment transaction.

NOTE: For demonstrations use the account name `testuser@openmarket.com` with the password `testuser`.

Open Market, Inc.

Data transfer complete:

FIG. 6

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<u>F</u> ile	<u>O</u> ptions	<u>N</u> avigate	<u>A</u> nnotate	<u>H</u> elp
Document Title: <input type="text" value="Establish OpenMarket Account"/>				
Document URL: <input type="text" value="http://payment.openmarket.com/service/destabli."/>				
<div>Card Number: <input type="text"/></div> <div>Expiration Date: <input type="text"/> (format MM/YY)</div> <div>Check the appropriate boxes: <input type="checkbox"/> I am the owner of the above credit card. <input type="checkbox"/> The above address is also the billing address for this credit card.</div> <div>Your OpenMarket account statement is available on-line. At your option you may a copy of your statement automatically sent to your e-mail address at weekly or monthly intervals. Please choose a statement option. <input type="checkbox"/> Weekly statements <input type="checkbox"/> Monthly statements <input type="checkbox"/> No e-mail statements</div> <div>Account name and password Please choose an account name and password for your OpenMarket account. We suggest using an account name that is unique and easy to remember such as your e-mail address. Your password should be 8 characters or longer.</div> <div>Account Name <input type="text"/></div> <div>Password <input type="text"/></div>				
<div>Back</div> <div>Forward</div> <div>Home</div> <div>Reload</div> <div>Open...</div> <div>Save As...</div> <div>Clone</div> <div>New Window</div> <div>Close Window</div>				

FIG. 7

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Document is protected.
Enter username for Open Market Account at payment.openmarket.com:

OK Cancel

FIG. 8

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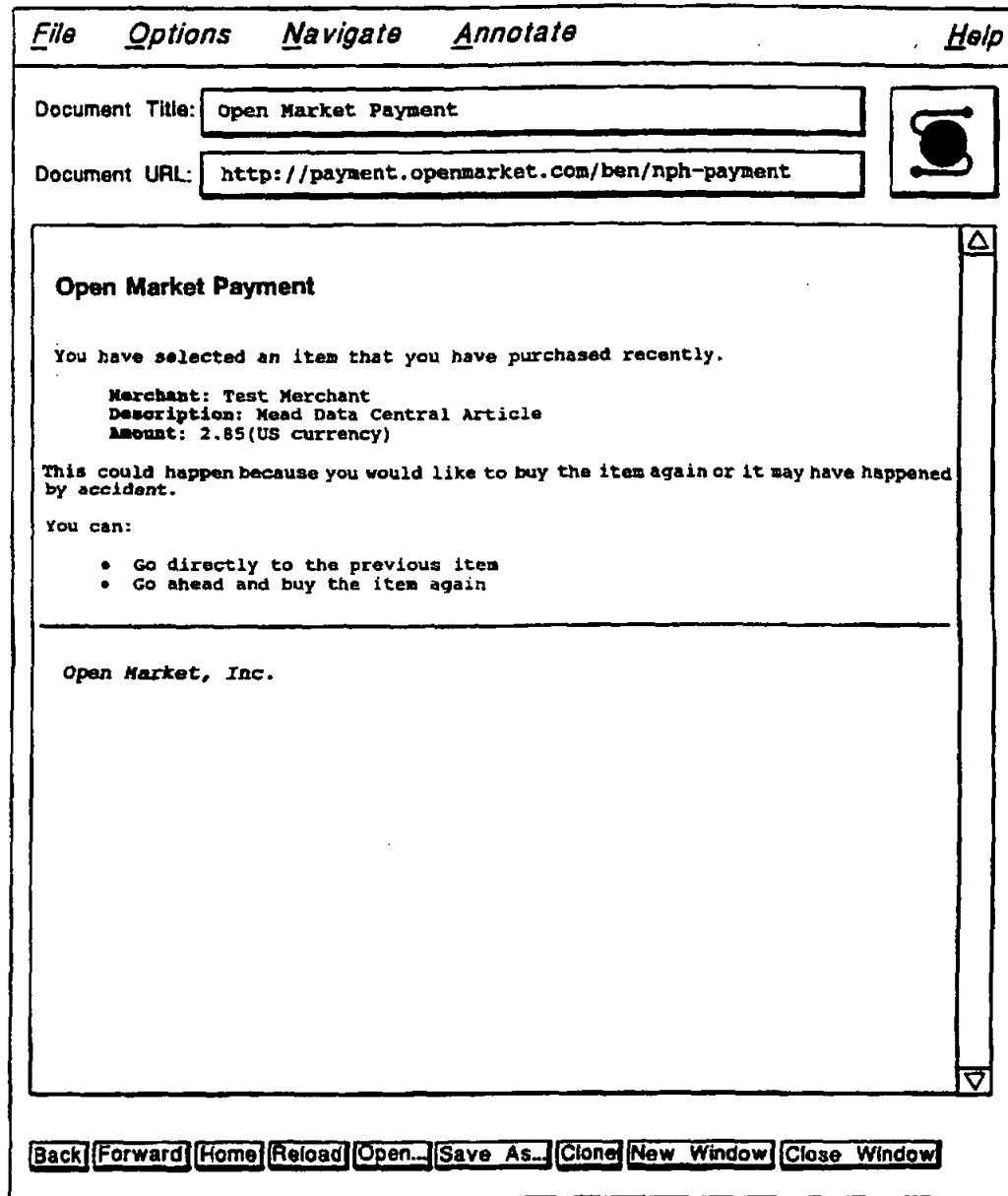


FIG. 9

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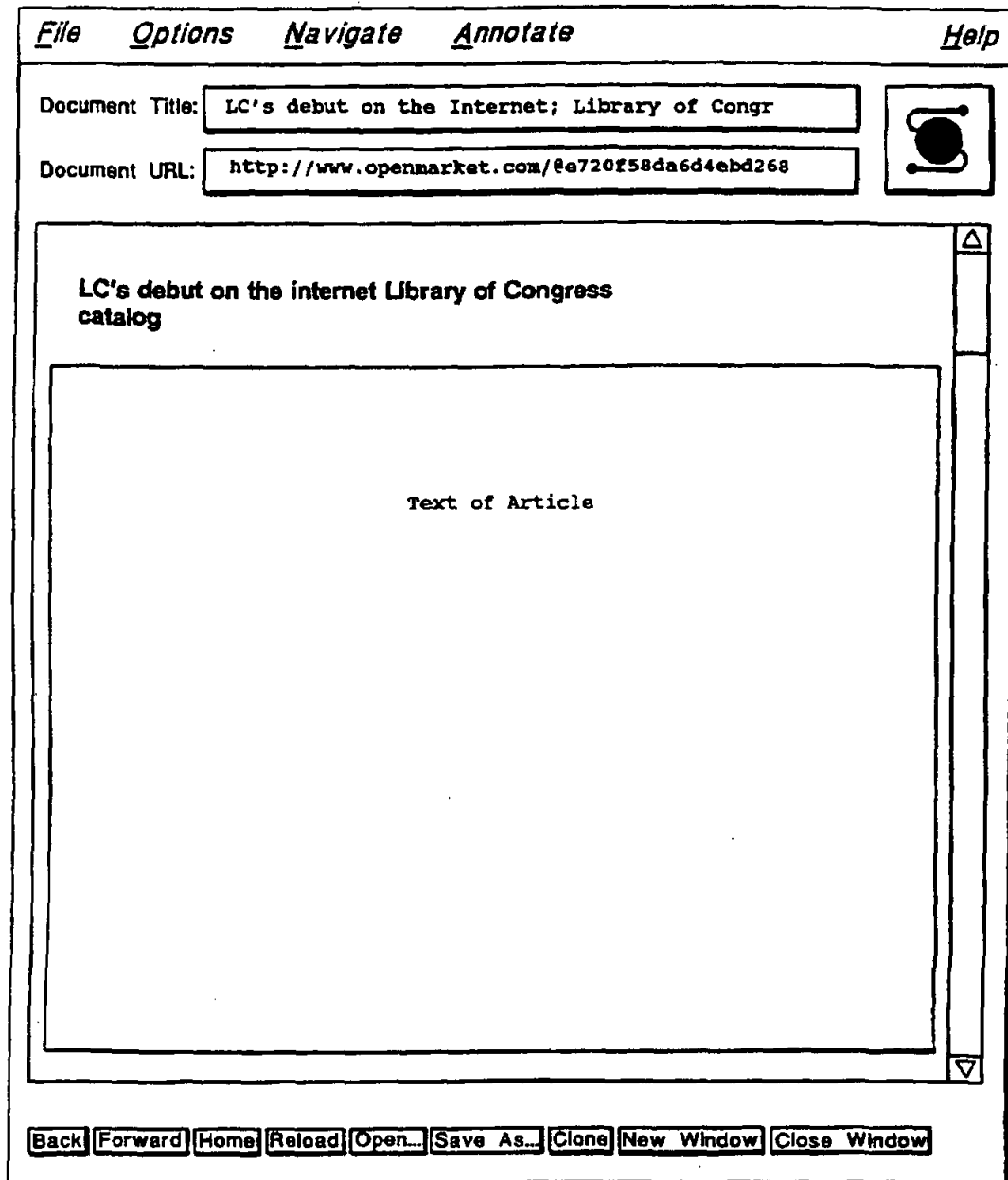


FIG. 10

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<u>File</u>	<u>Options</u>	<u>Navigate</u>	<u>Annotate</u>	<u>Help</u>																																																																	
Document Title: <input type="text" value="Smart Statement for Test User"/>																																																																					
Document URL: <input type="text" value="http://payment.openmarket.com/in/nph-statene"/>																																																																					
<p>Information about the item.</p> <p>Transactions in October 1994</p> <table> <tbody> <tr><td>Mon Oct 3</td><td>Test Merchant</td><td>Dilbert subscription</td><td>20 seconds</td><td>amount \$0.10</td></tr> <tr><td>Tue Oct 4</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> <tr><td>Tue Oct 4</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> <tr><td>Tue Oct 4</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> <tr><td>Tue Oct 4</td><td>Test Merchant</td><td>N.Y. Times Article</td><td>amount</td><td>\$0.50</td></tr> <tr><td>Tue Oct 4</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> <tr><td>Wed Oct 5</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> <tr><td>Wed Oct 5</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> <tr><td>Wed Oct 5</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> <tr><td>Wed Oct 5</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> <tr><td>Wed Oct 5</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> <tr><td>Wed Oct 5</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> <tr><td>Wed Oct 5</td><td>Test Merchant</td><td>Head Data Central Article</td><td>amount</td><td>\$2.95</td></tr> </tbody> </table> <p>Your total is 33.05.</p> <p>Previous Statements</p> <ul style="list-style-type: none"> • September 1994 • August 1994 <p>Return to your Newest Statement</p> <p>Feedback</p> <p>You can send us comments and suggestions here.</p>					Mon Oct 3	Test Merchant	Dilbert subscription	20 seconds	amount \$0.10	Tue Oct 4	Test Merchant	Head Data Central Article	amount	\$2.95	Tue Oct 4	Test Merchant	Head Data Central Article	amount	\$2.95	Tue Oct 4	Test Merchant	Head Data Central Article	amount	\$2.95	Tue Oct 4	Test Merchant	N.Y. Times Article	amount	\$0.50	Tue Oct 4	Test Merchant	Head Data Central Article	amount	\$2.95	Wed Oct 5	Test Merchant	Head Data Central Article	amount	\$2.95	Wed Oct 5	Test Merchant	Head Data Central Article	amount	\$2.95	Wed Oct 5	Test Merchant	Head Data Central Article	amount	\$2.95	Wed Oct 5	Test Merchant	Head Data Central Article	amount	\$2.95	Wed Oct 5	Test Merchant	Head Data Central Article	amount	\$2.95	Wed Oct 5	Test Merchant	Head Data Central Article	amount	\$2.95	Wed Oct 5	Test Merchant	Head Data Central Article	amount	\$2.95
Mon Oct 3	Test Merchant	Dilbert subscription	20 seconds	amount \$0.10																																																																	
Tue Oct 4	Test Merchant	Head Data Central Article	amount	\$2.95																																																																	
Tue Oct 4	Test Merchant	Head Data Central Article	amount	\$2.95																																																																	
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Tue Oct 4	Test Merchant	N.Y. Times Article	amount	\$0.50																																																																	
Tue Oct 4	Test Merchant	Head Data Central Article	amount	\$2.95																																																																	
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<input type="button" value="Back"/> <input type="button" value="Forward"/> <input type="button" value="Home"/> <input type="button" value="Reload"/> <input type="button" value="Open..."/> <input type="button" value="Save As..."/> <input type="button" value="Clone"/> <input type="button" value="New Window"/> <input type="button" value="Close Window"/>																																																																					

FIG. 11

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<u>F</u> ile	<u>O</u> ptions	<u>N</u> avigate	<u>A</u> nnotate	<u>H</u> elp
Document Title: <input type="text" value="Smart Statement Detail"/>				
Document URL: <input type="text" value="http://payment.openmarket.com/@c632f154cc8021"/>				
<div><div>Smart Statement Detail</div><div>This is the detailed information about a particular transaction from your Smart Statement</div><div>Transaction Information url: http://www.openmarket.com/demos/aug15/mall/mead-fingerprint/mkarticle.cgo transaction_log_id: 50254.0 currency: US transaction_date: 781377633 initiator: 1.0 expiration: 2592000 description: Mead Data Central Article amount: 2.95 beneficiary: 3.0 ip_address: 199.170.183.13 transaction_type: p domain: mead.internet-1</div><div>Merchant Information telephone: 617-621-9501 address_1: Open Market, Inc. address_2: 215 First Street fax: 617-621-1703 address_3: Cambridge, MA email: testmerchant@openmarket.com principal_name: Test Merchant</div></div>				
<div>BackForwardHomeReloadOpen...Save As...CloneNew WindowClose Window</div>				

FIG. 12

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<u>File</u>	<u>Options</u>	<u>Navigate</u>	<u>Annotate</u>	<u>Help</u>
Document Title: <input type="text" value="Smart Statement Detail"/>				
Document URL: <input type="text" value="http://payment.openmarket.com/@c632f154cc8021"/>				
<pre> url: http://www.openmarket.com/demos/aug15/mall/mead-fingerprint/mkarticle.cgo transaction_log_id: 50254.0 currency: US transaction_date: 781377633 initiator: 1.0 expiration: 2592000 description: Mead Data Central Article amount: 2.95 beneficiary: 3.0 ip_address: 199.170.183.13 transaction_type.p domain: mead.internet-1 </pre>				
<p>Merchant Information</p> <pre> telephone: 617-621-9501 address_1: Open Market, Inc. address_2: 215 First Street fax: 617-621-1703 address_3: Cambridge, MA email: testmerchant@openmarket.com principal_name: Test Merchant home_url: country: US postal_code: 02142 </pre>				
<p>Feedback</p> <p>You can send us comments and suggestions here.</p>				
<input type="button" value="Back"/> <input type="button" value="Forward"/> <input type="button" value="Home"/> <input type="button" value="Reload"/> <input type="button" value="Open..."/> <input type="button" value="Save As..."/> <input type="button" value="Clone"/> <input type="button" value="New Window"/> <input type="button" value="Close Window"/>				

FIG. 13

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The screenshot shows a web browser window with a menu bar containing 'File', 'Options', 'Navigate', 'Annotate', and 'Help'. Below the menu bar, there are two input fields: 'Document Title:' with the text 'Open Market Feedback' and 'Document URL:' with the text 'http://payment.openmarket.com/ben/feedback.cg'. To the right of these fields is a small icon of a camera or scanner. Below the input fields is a text area containing the following text: 'Or if you prefer, you can send your comments via electronic mail to feedback@openmarket.com or via FAX to +1.617.621.1703. If you would like a reply please include your e-mail address.' Below this text are three input fields: 'Your Open Market account name (optional):', 'Your E-mail address (optional):', and 'Subject:'. Below these fields is a large text area for 'Your comments:'. At the bottom of the form is a 'Submit Feedback' button. At the bottom of the browser window is a status bar with buttons for 'Back', 'Forward', 'Home', 'Reload', 'Open...', 'Save As...', 'Clone', 'New Window', and 'Close Window'.

File Options Navigate Annotate Help

Document Title: Open Market Feedback

Document URL: http://payment.openmarket.com/ben/feedback.cg

Or if you prefer, you can send your comments via electronic mail to feedback@openmarket.com or via FAX to +1.617.621.1703. If you would like a reply please include your e-mail address.

Your Open Market account name (optional):

Your E-mail address (optional):

Subject:

Your comments:

Submit Feedback

Back Forward Home Reload Open... Save As... Clone New Window Close Window

FIG. 14

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NETWORK SALES SYSTEM

REFERENCES TO APPENDICES

Microfiche appendices A-G, 4 sheets of 192 images total, are being submitted with the present application.

A claim of copyright is hereby made by Open Market, Incorporated with respect to the software code contained in the microfiche appendices, as of the date of first issuance of a U.S. patent based on this application. The copyright owner has no objection to the facsimile reproduction by anyone of the microfiche appendices as they appear in the Patent and Trademark office patent file or records, but reserves all other copyright rights whatsoever.

This invention relates to user-interactive network sales systems for implementing an open marketplace for goods or services over computer networks such as the Internet.

U.S. patent application Ser. No. 08/168,519, filed Dec. 16, 1993 by David K. Gifford and entitled "Digital Active Advertising," the entire disclosure of which is hereby incorporated herein in its entirety by reference, now abandoned, describes a network sales system that includes a plurality of buyer computers, a plurality of merchant computers, and a payment computer. A user at a buyer computer asks to have advertisements displayed, and the buyer computer requests advertisements from a merchant computer, which sends the advertisements to the buyer computer. The user then requests purchase of an advertised product, and the buyer computer sends a purchase message to the merchant computer. The merchant computer constructs a payment order that it sends to the payment computer, which authorizes the purchase and sends an authorization message to the merchant computer. When the merchant computer receives the authorization message it sends the product to the buyer computer.

The above-mentioned patent application also describes an alternative implementation of the network sales system in which, when the user requests purchase of an advertised product, the buyer computer sends a payment order directly to the payment computer, which sends an authorization message back to the buyer computer that includes an unforgeable certificate that the payment order is valid. The buyer computer then constructs a purchase message that includes the unforgeable certificate and sends it to the merchant computer. When the merchant computer receives the purchase request it sends the product to the buyer computer, based upon the pre-authorized payment order.

SUMMARY OF THE INVENTION

In one aspect, the invention provides a network-based sales system that includes at least one buyer computer for operation by a user desiring to buy a product, at least one merchant computer, and at least one payment computer. The buyer computer, the merchant computer, and the payment computer are interconnected by a computer network. The buyer computer is programmed to receive a user request for purchasing a product, and to cause a payment message to be sent to the payment computer that comprises a product identifier identifying the product. The payment computer is programmed to receive the payment message, to cause an access message to be created that comprises the product identifier and an access message authenticator based on a cryptographic key, and to cause the access message to be sent to the merchant computer. The merchant computer is programmed to receive the access message, to verify the access message authenticator to ensure that the access message authenticator was created using the cryptographic

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key, and to cause the product to be sent to the user desiring to buy the product.

The invention provides a simple design architecture for the network sales system that allows the merchant computer to respond to payment orders from the buyer computer without the merchant computer having to communicate directly with the payment computer to ensure that the user is authorized to purchase the product and without the merchant computer having to store information in a database regarding which buyers are authorized to purchase which products. Rather, when the merchant computer receives an access message from the buyer computer identifying a product to be purchased, the merchant computer need only check the access message to ensure that it was created by the payment computer (thereby establishing for the merchant computer that the buyer is authorized to purchase the product), and then the merchant computer can cause the product to be sent to the buyer computer who has been authorized to purchase the product.

In another aspect, the invention features a network-based sales system that includes at least one buyer computer for operation by a user desiring to buy products, at least one shopping cart computer, and a shopping cart database connected to the shopping cart computer. The buyer computer and the shopping cart computer are interconnected by a computer network. The buyer computer is programmed to receive a plurality of requests from a user to add a plurality of respective products to a shopping cart in the shopping cart database, and, in response to the requests to add the products, to send a plurality of respective shopping cart messages to the shopping cart computer each of which includes a product identifier identifying one of the plurality of products. The shopping cart computer is programmed to receive the plurality of shopping cart messages, to modify the shopping cart in the shopping cart database to reflect the plurality of requests to add the plurality of products to the shopping cart, and to cause a payment message associated with the shopping cart to be created. The buyer computer is programmed to receive a request from the user to purchase the plurality of products added to the shopping cart and to cause the payment message to be activated to initiate a payment transaction for the plurality of products added to the shopping cart.

In another aspect, the invention features a network-based link message system that includes at least one client computer for operation by a client user and at least one server computer for operation by a server user. The client computer and the server computer are interconnected by a computer network. The client computer is programmed to send an initial link message to the server computer. The server computer is programmed to receive the initial link message from the client computer and to create, based on information contained in the initial link message, a session link message that encodes a state of interaction between the client computer and the server computer. The session link message includes a session link authenticator, computed by a cryptographic function of the session link contents, for authenticating the session link message. The server computer is programmed to cause the session link message to be sent to the client computer. The client computer is programmed to cause the session link message to be sent to a computer in the network that is programmed to authenticate the session link message by examining the session link authenticator and that is programmed to respond to the session link message based on the state of the interaction between the client computer and the server computer.

In another aspect, the invention features a network-based sales system that includes a merchant database having a

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plurality of digital advertisements and a plurality of respective product fulfillment items, at least one creation computer for creating the merchant database, and at least one merchant computer for causing the digital advertisements to be transmitted to a user and for causing advertised products to be transmitted to the user. The creation computer and the merchant computer are interconnected by a computer network. The creation computer is programmed to create the merchant database, and to transmit the digital advertisements and the product fulfillment items to the merchant computer. The merchant computer is programmed to receive the digital advertisements and product fulfillment items, to receive a request for a digital advertisement from a user, to cause the digital advertisement to be sent to the user, to receive from the user an access message identifying an advertised product, and to cause the product to be sent to the user in accordance with a product fulfillment item corresponding to the product.

In another aspect, the invention features a hypertext statement system that includes a client computer for operation by a client user and one or more server computers for operation by a server user. The client computer and the server computers are interconnected by a computer network. At least one of the server computers is programmed to record purchase transaction records in a database. Each of the purchase transaction records includes a product description. The server computer is programmed to transmit a statement document that includes the purchase transaction records to the client computer. The client computer is programmed to display the product descriptions, to receive a request from the client user to display a product corresponding to a product description displayed by the client computer, and to cause a product hypertext link derived from a purchase transaction record to be activated. At least one of the server computers is programmed to respond to activation of the product hypertext link by causing the product to be sent to the client computer.

In another aspect, the invention features a network payment system that includes at least one buyer computer for operation by a user desiring to buy a product and at least one payment computer for processing payment messages from the buyer computer. The buyer computer and the payment computer are interconnected by a computer network. The buyer computer is programmed to cause a payment message to be sent to the payment computer. The payment message includes a product identifier identifying the product that the user desires to buy. The payment computer is programmed to receive the payment message, to cause an access message to be created to enable the user to access the product, and to record a purchase transaction record in the settlement database. The buyer computer is programmed to cause a request for purchase transaction records to be sent to the payment computer. The payment computer is programmed to receive the request for purchase transaction records and to cause a document derived from the purchase transaction records to be sent to the buyer computer.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a block diagram of a network sales system in accordance with the present invention.

FIG. 2 (2-A through 2-I) is a flowchart diagram illustrating the operation of a purchase transaction in the network sales system of FIG. 1.

FIG. 3 (3-A through 3-B) is a flowchart diagram illustrating the use of a shopping cart for the purchase of products in connection with the network sales system of FIG. 1.

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FIG. 4 (4-A through 4-C) is a flowchart diagram illustrating the operation of a smart statement in the network sales system of FIG. 1.

FIG. 5 is a screen snapshot of an advertising document that the merchant computer sends to the buyer computer in FIG. 2.

FIG. 6 is a screen snapshot of a confirmation document that the payment computer sends to the buyer computer in FIG. 2.

FIG. 7 is a screen snapshot of a new account document that the payment computer sends to the buyer computer in FIG. 2.

FIG. 8 is a screen snapshot of an account name prompt that the buyer computer creates in FIG. 2.

FIG. 9 is a screen snapshot of a document that the payment computer sends to the buyer computer in FIG. 2 and that provides an option either to repurchase or to use a previously purchased access.

FIG. 10 is a screen snapshot of a fulfillment document that the merchant computer sends to the buyer computer in FIG. 2.

FIG. 11 is a screen snapshot of a smart statement document that the payment computer sends to the buyer computer in FIG. 4.

FIGS. 12 and 13 are screen snapshots of a transaction detail document that the payment computer sends to the buyer computer in FIG. 4.

FIG. 14 is a screen snapshot of a customer service form that the payment computer sends to the buyer computer in FIG. 4.

DETAILED DESCRIPTION

With reference to FIG. 1, a network sales system in accordance with the present invention includes a buyer computer 12 operated by a user desiring to buy a product, a merchant computer 14, which may be operated by a merchant willing to sell products to the buyer or by a manager of the network sales system, a payment computer 16 typically operated by a manager of the network sales system, and a creation computer 20 typically operated by the merchant. The buyer, merchant, payment, and creation computers are all inter-connected by a computer network 10 such as the Internet.

Creation computer 20 is programmed to build a "store" of products for the merchant. A printout of a computer program for use in creating such a "store" in accordance with the present invention is provided as Appendix F.

The products advertised by merchant computer 14 may be, for example, newspaper or newsletter articles available for purchase by buyers. Creation computer 20 creates a digital advertisement database 18 that stores advertising documents (which may for example be in the form of summaries of newspaper or newsletter articles, accompanied by prices) and product fulfillment items (which may be the products themselves if the products can be transmitted over the network, or which may be hard goods identifiers if the products are hard goods, i.e., durable products as opposed to information products). Creation computer 20 transmits contents of the advertising document database 18 to merchant computer 14 to enable the merchant computer to cause advertisements and products to be sent to buyers. Merchant computer 14 maintains advertising documents locally in advertising document database 15. In an alternative embodiment, the creation computer does not have a local digital advertisement database, but instead updates a remote

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advertising document database on a merchant computer. These updates can be accomplished using HTML forms or other remote database technologies as is understood by practitioners of the art.

Payment computer 16 has access to a settlement database 22 in which payment computer 16 can record details of purchase transactions. The products may be organized into various "domains" of products, and payment computer 16 can access settlement database 22 to record and retrieve records of purchases of products falling within the various domains. Payment computer 16 also has access to a shopping cart database 21 in which a "shopping cart" of products that a user wishes to purchase can be maintained as the user shops prior to actual purchase of the contents of the shopping cart.

With reference to FIG. 2, a purchase transaction begins when a user at buyer computer 12 requests advertisements (step 24) and buyer computer 12 accordingly sends an advertising document URL (universal resource locator) to merchant computer 14 (step 26). The merchant computer fetches an advertising document from the advertising document database (step 28) and sends it to the buyer computer (step 30). An example of an advertising document is shown in FIG. 5. Details of URLs and how they are used are found in the microfiche Appendix G.

The user browses through the advertising document and eventually requests a product (step 32). This results in the buyer computer sending payment URL A to the payment computer (step 34). Payment URL A includes a product identifier that represents the product the user wishes to buy, a domain identifier that represents a domain of products to which the desired product belongs, a payment amount that represents the price of the product, a merchant computer identifier that represents merchant computer 14, a merchant account identifier that represents the particular merchant account to be credited with the payment amount, a duration time that represents the length of time for which access to the product is to be granted to the user after completion of the purchase transaction, an expiration time that represents a deadline beyond which this particular payment URL cannot be used, a buyer network address, and a payment URL authenticator that is a digital signature based on a cryptographic key. The payment URL authenticator is a hash of other information in the payment URL, the hash being defined by a key shared by the merchant and the operator of the payment computer.

In an alternative embodiment, step 34 consists of the buyer computer sending a purchase product message to the merchant computer, and the merchant computer provides payment URL A to the buyer computer in response to the purchase product message. In this alternative embodiment, payment URL A contains the same contents as above. The buyer computer then sends the payment URL A it has received from the merchant computer to the payment computer.

When the payment computer receives the payment URL it verifies whether the payment URL authenticator was created from the contents of the payment URL using the cryptographic key (step 36). If not, the payment computer sends a document to the buyer computer indicating that access to the network sales system is denied (step 38). Otherwise, the payment computer determines whether the expiration time has past (step 40). If it has, the payment computer sends a document to the buyer computer indicating that the time has expired (step 41). Otherwise, the payment computer checks the buyer computer network

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address to see if it matches the one specified in the payment URL (step 42). If it does not match, the payment computer sends a document to the buyer computer indicating that access to the network payment system is denied (step 43). Otherwise, the payment computer sends a payment confirmation document to the buyer computer, the payment confirmation document including an "open" link and a "continue" link (step 44).

An example of a confirmation document is shown in FIG. 6. The confirmation document asks the user to click on a "continue" button if the user already has an account with the payment computer, or to click on an "open" button if the user does not already have an account and wishes to open one.

If the user clicks on the "open" button (step 46), the buyer computer sends payment URL C to the payment computer (step 48), payment URL C being similar to payment URL A but also indicating that the user does not yet have an account. The payment computer creates a new account document (step 50) and sends it to the buyer computer (step 52). An example of a new account document is shown in FIG. 7. When the user receives the new account document he enters the new account name, an account password, a credit card number, the credit card expiration date, and security information such as the maiden name of the user's mother (step 54), and presses a "submit" button (not shown in FIG. 7). The buyer computer sends the new account information to the payment computer (step 56), which enters the new account in the settlement database (step 58).

If the user clicks on the "continue" button (step 60), the buyer computer sends payment URL B to the payment computer (step 62), payment URL B being similar to payment URL A but also indicating that the user already has an account. The payment computer then instructs the buyer computer to provide the account name and password (steps 64 and 66), and the buyer computer prompts the user for this information by creating an account name prompt (example shown in FIG. 8) and a similar password prompt. The user enters the information (step 68) and the buyer computer sends the account name and password to the payment computer (step 70).

The payment computer verifies whether the user name and password are correct (step 72). If they are not correct, the payment computer sends a document to the buyer computer indicating that access to the network sales system is denied (step 74). Otherwise, the payment computer determines whether additional security is warranted, based on, e.g., whether the payment amount exceeds a threshold (step 73). If additional security is warranted, the payment computer creates a challenge form document and sends it to the buyer computer (step 75). The user enters the security information (step 77), the buyer computer sends the security information to the payment computer (step 79), and the payment computer determines whether the security information is correct (step 81). If it is not correct, the payment computer sends a document to the buyer computer indicating that access to the network sales system is denied (step 83).

If the security information is correct, or if additional security was not warranted, the payment computer checks the settlement database to determine whether the user has unexpired access to the domain identifier contained in the payment URL (step 82). If so, the payment computer sends to the buyer computer a document providing an option either to repurchase or to use the previously purchased access (step 84). An example of such a document is shown in FIG. 9. The

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user can respond to the recent purchase query document by choosing to access the previously purchased document (step 85) or to go ahead and buy the currently selected product (step 86).

If the user chooses to access the previously purchased document, the buyer computer skips to step 92 (see below). If the user chooses to buy the currently selected product, the payment computer calculates an actual payment amount that may differ from the payment amount contained in the payment URL (step 87). For example, the purchase of a product in a certain domain may entitle the user to access other products in the domain for free or for a reduced price for a given period of time.

The payment computer then verifies whether the user account has sufficient funds or credit (step 76). If not, the payment computer sends a document to the buyer computer indicating that the user account has insufficient funds (step 78). Otherwise, the payment computer creates an access URL (step 80) that includes a merchant computer identifier, a domain identifier, a product identifier, an indication of the end of the duration time for which access to the product is to be granted, the buyer network address, and an access URL authenticator that is a digital signature based on a cryptographic key. The access URL authenticator is a hash of other information in the access URL, the hash being defined by a key shared by the merchant and the operator of the payment computer. The payment computer then records the product identifier, the domain, the user account, the merchant account, the end of duration time, and the actual payment amount in the settlement database (step 88).

The payment computer then sends a redirect to access URL to the buyer computer (step 90), which sends the access URL to the merchant computer (step 92). The merchant computer verifies whether the access URL authenticator was created from the contents of the access URL using the cryptographic key (step 94). If not, the merchant computer sends a document to the buyer computer indicating that access to the product is denied (step 96).

Otherwise, the merchant computer verifies whether the duration time for access to the product has expired (step 98). This is done because the buyer computer can request access to a purchased product repeatedly. If the duration time has expired, the merchant computer sends a document to the buyer computer indicating that the time has expired (step 100). Otherwise the merchant computer verifies that the buyer computer network address is the same as the buyer network address in the access URL (step 101), and if so, sends a fulfillment document to the buyer computer (step 102), which is displayed by the buyer computer (step 104). An example of a fulfillment document is shown in FIG. 10. Otherwise, the merchant computer sends a document to the buyer computer indicating that access is not allowed (step 103).

With reference now to FIG. 3, when the merchant computer sends the advertising document to the buyer computer, the user may request that a product be added to a shopping cart in the shopping cart database rather than request that the product be purchased immediately. The buyer computer sends a shopping cart URL to the payment computer (step 108), the shopping cart URL including a product identifier, a domain identifier, a payment amount, a merchant computer identifier, a merchant account identifier, a duration time, an expiration time, and a shopping cart URL authenticator that is a digital signature based on a cryptographic key. The shopping cart URL authenticator is a hash of other information in the shopping cart URL, the hash being defined by

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a key shared by the merchant and the operator of the payment computer.

The payment computer verifies whether the shopping cart URL authenticator was created from the contents of the shopping cart URL using a cryptographic key (step 110). If not, the payment computer sends a document to the buyer computer indicating that access to the network sales system is denied (step 112). Otherwise, before any modification to a user's shopping cart is allowed, user authentication is performed (step 113) in a manner analogous to steps 40-81. Once the user is authenticated, the payment computer creates or updates a payment URL for the shopping cart (step 114).

The user then either requests more advertisements (step 24 in FIG. 2) and possibly adds another product to the shopping cart, requests display of the shopping cart (step 116), or requests purchase of the entire contents of the shopping cart (step 124). If the user requests display of the shopping cart (step 116), the buyer computer sends a fetch shopping cart request to the payment computer (step 118), and the payment computer and buyer computer (step 119) perform steps analogous to steps 64-81. The payment computer returns the contents of the shopping cart to the buyer computer (step 120), which displays the contents of the shopping cart (step 122). If the user requests that the entire contents of the shopping cart be purchased (step 124) the buyer computer causes the payment URL for the shopping cart to be activated (step 126) and the payment URL is processed in a manner analogous to the processing of payment URLs for individual products (beginning with step 36 in FIG. 2).

With reference now to FIG. 4, a user can request display of a "smart statement" that lists purchase transactions for a given month (step 128). When the buyer computer receives such a request, it sends a smart statement URL to the payment computer (step 130).

When the payment computer receives the smart statement URL, it verifies whether the smart statement URL authenticator was created from the contents of the smart statement URL using a cryptographic key (step 132). If not, the payment computer sends a document to the buyer computer indicating that access is denied (step 134). Otherwise, the payment computer checks to determine whether the buyer network address in the smart statement URL matches the buyer computer's actual network address (step 136). If not, the payment computer sends a document to the buyer computer indicating that access is denied (step 138). Otherwise (step 140), the payment computer and buyer computer perform a set of steps analogous to steps 64-81 in FIG. 2 (payment computer requests account name and password, user provides the requested information, and payment computer verifies the information).

In an alternative embodiment steps 132-138 are omitted.

After verification of account information is complete, the payment computer retrieves the requested settlement data from the settlement database, creates a smart statement document for the buyer, and sends the smart statement document to the buyer computer (step 142). An example of a smart statement document is shown in FIG. 11. Each purchase transaction record in the smart statement document includes the data of the transaction, the name of the merchant, an identification of the product, and the payment amount for the product. The smart statement document also includes a transaction detail URL for each purchase transaction (these URLs, or hypertext links, are discussed below and are not shown in FIG. 11). The smart statement docu-

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ment also identifies previous statements that the user may wish to have displayed.

The buyer computer displays the retrieved document (step 144), and the user may request transaction details for a particular transaction listed on the smart statement (step 146). If so, the buyer computer sends a transaction detail URL (or "payment detail URL") to the payment computer (step 148). The transaction detail URL includes a transaction identifier, a buyer network address, and a transaction detail URL authenticator. When the payment computer receives the transaction detail URL, it performs (step 150) a set of steps analogous to steps 132-140 (verification of URL authenticator, buyer network address, and account information). The payment computer then retrieves from the settlement database data corresponding to the payment transaction specified in the transaction detail URL, creates a transaction detail document, and sends it to the buyer computer (step 152).

An example of a transaction detail document is shown in FIGS. 12 and 13. The document displays a number of items of information about the transaction, including the transaction date, end of the duration time ("expiration"), a description of the product, the payment amount, the domain corresponding to the product, an identification of the merchant, and the merchant's address.

The smart statement document and the transaction detail document both include customer service URLs (hypertext links) that allow the user to request customer service (i.e., to send comments and suggestions to the payment computer). When the user requests customer service (step 154), the buyer computer sends the customer service URL to the payment computer (step 156), which creates a customer service form and sends it to the buyer computer (step 158). An example of a customer service form is shown in FIG. 14. The user types comments into the customer service form (step 160), and the buyer computer sends the user's comments to the payment computer (step 162). The payment computer then posts the user comments and sends a thank you document to the buyer computer (step 164).

A user may request display of a product included in the smart statement. When the user requests that the product be displayed (step 166), the buyer computer sends the access URL contained in the smart statement document to the merchant computer (step 168), and the buyer computer and merchant computer perform a set of steps analogous to steps 94-104 in FIG. 2 (authentication of access URL, verification whether duration time has expired, verification of buyer network address, and transmission of fulfillment document to buyer computer).

Whenever the present application states that one computer sends a URL to another computer, it should be understood that in preferred embodiments the URL is sent in a standard HTTP request message, unless a URL message is specified as a redirection in the present application. The request message includes components of the URL as described by the standard HTTP protocol definition. These URL components in the request message allow the server to provide a response appropriate to the URL. The term "URL" as used in the present application is an example of a "link," which is a pointer to another document or form (including multimedia documents, hypertext documents including other links, or audio/video documents).

When the present application states that one computer sends a document to another computer, it should be understood that in preferred embodiments the document is a success HTTP response message with the document in the

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body of the message. When the present application states that a server sends an account name and password request message to the client, it should be understood that in preferred embodiments the account name and password request message is an unauthorized HTTP response. A client computer sends account name and password information to a server as part of a request message with an authorization field.

The software architecture underlying the particular preferred embodiment is based upon the hypertext conventions of the World Wide Web. Appendix A describes the Hypertext Markup Language (HTML) document format used to represent digital advertisements. Appendix B describes the HTML forms fill out support in Mosaic 2.0. Appendix C is a description of the Hypertext Transfer Protocol (HTTP) between buyer and merchant computers. Appendix D describes how documents are named with Uniform Resource Locators (URLs) in the network of computers, and Appendix E describes the authentication of URLs using digital signatures.

A printout of a computer program for use in creating and operating such a "store" in accordance with the present invention is provided as Appendix F. A printout of a computer program for use in operating other aspects of the network sales system in accordance with the present invention is provided in the microfiche appendix G.

There has been described a new and useful network-based sales system. It is apparent that those skilled in the art may make numerous modifications and departures from the specific embodiments described herein without departing from the spirit and scope of the claimed invention.

What is claimed is:

1. A network-based sales system, comprising:

at least one buyer computer for operation by a user desiring to buy a product;

at least one merchant computer; and

at least one payment computer;

said buyer computer, said merchant computer, and said payment computer being interconnected by a computer network;

said buyer computer being programmed to receive a user request for purchasing a product, and to cause a payment message to be sent to said payment computer that comprises a product identifier identifying said product; said payment computer being programmed to receive said payment message, to cause an access message to be created that comprises said product identifier and an access message authenticator based on a cryptographic key, and to cause said access message to be sent to said merchant computer; and

said merchant computer being programmed to receive said access message, to verify said access message authenticator to ensure that said access message authenticator was created using said cryptographic key, and to cause said product to be sent to said user desiring to buy said product.

2. A network-based sales system in accordance with claim 1, wherein said payment message and said access message each comprises a universal resource locator.

3. A network-based sales system in accordance with claim 1, wherein said payment computer is programmed to identify said merchant computer upon receipt of said payment message from said buyer computer.

4. A network-based sales system in accordance with claim 1, wherein said access message comprises a buyer network address.

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5. A network-based sales system in accordance with claim 4, wherein:

said product can be transmitted from one computer to another; and

said merchant computer causes said product to be sent to said user by transmitting said product to said buyer network address only.

6. A network-based sales system in accordance with claim 4, wherein said merchant computer is programmed to verify whether said buyer network address in said access message matches the actual network address of said buyer computer.

7. A network-based sales system in accordance with claim 1, wherein said payment message comprises a buyer network address.

8. A network-based sales system in accordance with claim 7, wherein said payment computer is programmed to verify whether said buyer network address in said payment message matches the actual network address of said buyer computer.

9. A network-based sales system in accordance with claim 1, wherein said access message authenticator comprises a cryptographic function of contents of said access message based on said cryptographic key.

10. A network-based sales system in accordance with claim 1, wherein said payment computer is programmed to verify said payment message authenticator to ensure that said payment message authenticator was created using said cryptographic key.

11. A network-based sales system in accordance with claim 10, wherein said payment message authenticator comprises a cryptographic function of contents of said payment message based on said cryptographic key.

12. A network-based sales system in accordance with claim 1, wherein said payment message comprises a payment amount.

13. A network-based sales system in accordance with claim 1, wherein said payment message comprises a merchant account identifier that identifies a merchant account.

14. A network-based sales system in accordance with claim 1, wherein said buyer computer is programmed to transmit a user account identifier to said payment computer that identifies a user account.

15. A network-based sales system in accordance with claim 14, wherein:

said payment message comprises a payment amount; and said payment computer is programmed to ensure that said user account has sufficient funds or credit to cover said payment amount.

16. A network-based sales system in accordance with claim 14, wherein:

said payment message comprises a payment amount and a merchant account identifier that identifies a merchant account; and

said payment computer is programmed to record said payment amount, said user account, and said merchant account in a settlement database.

17. A network-based sales system in accordance with claim 16, wherein:

said payment message comprises a domain identifier; and said payment computer is programmed to record said domain identifier and said user account in a settlement database.

18. A network-based sales system in accordance with claim 17, wherein said payment computer is programmed to check said settlement database, upon receipt of said payment message, to determine whether said user account has previously purchased a product associated with said domain identifier.

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19. A network-based sales system in accordance with claim 18, wherein said payment computer is programmed to determine an actual payment amount for said product identified by said product identifier in said payment message based on whether said user account has previously purchased a product associated with said domain identifier.

20. A network-based sales system in accordance with claim 1, wherein said buyer computer is programmed to transmit a user authenticator to said payment computer and said payment computer is programmed to verify said user authenticator.

21. A network-based sales system in accordance with claim 20, wherein said user authenticator comprises a password.

22. A network-based sales system in accordance with claim 20, wherein:

said buyer computer is programmed to transmit security information to said payment computer;

said payment computer is programmed to transmit a challenge form to said buyer computer under a predetermined condition, said challenge form asking for said security information previously transmitted by said buyer computer to said payment computer;

said payment computer is programmed to respond to said challenge form by querying said user for said security information and transmitting said security information to said payment computer; and

said payment computer is programmed to verify authenticity of said security information.

23. A network-based sales system in accordance with claim 22, wherein:

said payment message comprises a payment amount; and said predetermined condition comprises receipt of a payment amount in said payment message that exceeds a threshold.

24. A network-based sales system in accordance with claim 1, wherein said payment message comprises a merchant computer identifier that identifies said merchant computer.

25. A network-based sales system in accordance with claim 24, wherein said access message comprises said merchant computer identifier.

26. A network-based sales system in accordance with claim 1, wherein said payment message comprises a duration time that specifies a length of time for which access to said product is to be granted.

27. A network-based sales system in accordance with claim 26, wherein said payment computer is programmed to use said duration time to compute an end of duration time and to cause said end of duration time to be included in said access message.

28. A network-based sales system in accordance with claim 27, wherein said merchant computer is programmed to verify, upon receipt of said access message, that said end of duration time has not past.

29. A network-based sales system in accordance with claim 1, wherein said payment message comprises an expiration time after which said payment message can no longer be used.

30. A network-based sales system in accordance with claim 29, wherein said payment computer is programmed to verify, upon receipt of said payment message, that said expiration time has not past.

31. A network-based sales system in accordance with claim 1, wherein:

said payment computer is programmed to cause said access message to be sent to said buyer computer; and

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said buyer computer is programmed to cause said access message received from said payment computer to be sent to said merchant computer.

32. A network-based sales system, comprising:

at least one buyer computer for operation by a user 5 desiring to buy a product;

at least one merchant computer; and

at least one payment computer;

said buyer computer, said merchant computer, and said payment computer being interconnected by a computer 10 network;

said buyer computer being programmed to receive a user request for purchasing a product, and to cause a payment URL to be sent to said payment computer that comprises a product identifier identifying said product, 15 a payment amount, and a payment URL authenticator comprising a cryptographic function of contents of said payment URL based on a cryptographic key;

said payment computer being programmed to receive said payment URL, to verify said payment URL authenticator to ensure that said payment URL authenticator was created using said cryptographic key, to ensure that said user has sufficient funds or credit to cover said payment amount, to identify said merchant computer 20 operated by said merchant willing to sell said product to said buyer, to cause an access URL to be created that comprises said product identifier and an access URL authenticator comprising a cryptographic function of contents of said access URL based on a cryptographic key, and to cause said access URL to be sent to said 25 buyer computer;

said buyer computer being programmed to cause said access URL received from said payment computer to be sent to said merchant computer; and

said merchant computer being programmed to receive 30 said access URL, to verify said access URL authenticator to ensure that said access URL authenticator was created using said cryptographic key, and to cause said product to be sent to said user desiring to buy said product. 35

33. A method of operating a payment computer in a computer network comprising at least one buyer computer for operation by a user desiring to buy a product, at least one merchant computer, and at least one payment computer, the method comprising the steps of:

receiving, at said payment computer, a payment message that said buyer computer has caused to be sent to said payment computer in response to a user request for purchasing a product, said payment message comprising a product identifier identifying said product; 40

causing an access message to be created that comprises said product identifier and an access message authenticator based on a cryptographic key; and

causing said access message to be sent to said merchant computer, said merchant computer being programmed to receive said access message, to verify said access message authenticator to ensure that said access message authenticator was created using said cryptographic key, and to cause said product to be sent to said user 45 desiring to buy said product. 50

34. A network-based sales system, comprising:

at least one buyer computer for operation by a user desiring to buy products;

at least one shopping cart computer; and

a shopping cart database connected to said shopping cart computer; 55

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said buyer computer and said shopping cart computer being interconnected by a computer network;

said buyer computer being programmed to receive a plurality of requests from a user to add a plurality of respective products to a shopping cart in said shopping cart database, and, in response to said requests to add said products, to send a plurality of respective shopping cart messages to said shopping cart computer each of which comprises a product identifier identifying one of said plurality of products; 60

said shopping cart computer being programmed to receive said plurality of shopping cart messages, to modify said shopping cart in said shopping cart database to reflect said plurality of requests to add said plurality of products to said shopping cart, and to cause a payment message associated with said shopping cart to be created; and

said buyer computer being programmed to receive a request from said user to purchase said plurality of products added to said shopping cart and to cause said payment message to be activated to initiate a payment transaction for said plurality of products added to said shopping cart;

said shopping cart being a stored representation of a collection of products, said shopping cart database being a database of stored representations of collections of products, and said shopping cart computer being a computer that modifies said stored representations of collections of products in said database.

35. A network-based sales system in accordance with claim 34, wherein said shopping cart computer is programmed to cause said payment message to be created before said buyer computer causes said payment message to be activated.

36. A network-based sales system in accordance with claim 34, wherein said buyer computer is programmed to receive a request from said user to display said plurality of products added to said shopping cart.

37. A network-based sales system in accordance with claim 36, wherein said buyer computer is programmed to transmit a fetch shopping cart request to said payment computer in response to receipt of said request from said user.

38. A network-based sales system in accordance with claim 37, wherein:

said payment computer is programmed to respond to said fetch shopping cart request by transmitting a message to said buyer computer indicating said plurality of products added to said shopping cart; and

said buyer computer is programmed to display said plurality of products added to said shopping cart.

39. A method of operating a shopping cart computer in a computer network comprising at least one buyer computer for operation by a user desiring to buy products, at least one shopping cart computer, and a shopping cart database connected to said shopping cart computer, said method comprising the steps of:

receiving, at said shopping cart computer, a plurality of shopping cart messages sent to said shopping cart computer by said buyer computer in response to receipt of a plurality of requests from a user to add a plurality of respective products to a shopping cart in said shopping cart database, each of said shopping cart messages comprising a product identifier identifying one of said plurality of products; 65

modifying said shopping cart in said shopping cart database to reflect said plurality of requests to add said plurality of products to said shopping cart; and

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causing a payment message associated with said shopping cart to be created;

said buyer computer being programmed to receive a request from said user to purchase said plurality of products added to said shopping cart and to cause said payment message to be activated to initiate a payment transaction for said plurality of products added to said shopping cart;

said shopping cart being a stored representation of a collection of products, said shopping cart database being a database of stored representations of collections of products, and said shopping cart computer being a computer that modifies said stored representations of collections of products in said database.

40. A network-based link message system, comprising:

at least one client computer for operation by a client user; and

at least one server computer for operation by a server user; said client computer and said server computer being interconnected by a computer network;

said client computer being programmed to send an initial link message to said server computer;

said server computer being programmed to receive said initial link message from said client computer, to create, based on information contained in said initial link message, a session link message that encodes a state of interaction between said client computer and said server computer, said session link message comprising a session link authenticator, computed by a cryptographic function of said session link contents, for authenticating said session link message, and to cause said session link message to be sent to said client computer;

said client computer being programmed to cause said session link message to be sent to a computer in said network that is programmed to authenticate said session link message by examining said session link authenticator and that is programmed to respond to said session link message based on said state of said interaction between said client computer and said server computer.

41. A network-based link message system in accordance with claim 40, wherein:

said client computer comprises a buyer computer for operation by a user desiring to buy a product;

said server computer comprises a payment computer for operation by a manager of said network-based link message system; and

said network-based link message system further comprises a merchant computer for operation by a merchant willing to sell said product to said buyer.

42. A network-based link message system in accordance with claim 41, wherein said computer that is programmed to

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authenticate said session link message comprises said merchant computer.

43. A network-based link message system in accordance with claim 41, wherein said initial link message comprises a payment message to said payment computer that comprises a product identifier identifying said product.

44. A network-based link message system in accordance with claim 43, wherein said session link message comprises an access message that comprises said product identifier to be created.

45. A network-based link message system in accordance with claim 44, wherein said merchant computer is programmed to respond to said access message by causing said product to be sent to said user desiring to buy said product.

46. A network-based link message system in accordance with claim 40, wherein said initial link message and said session link message comprise universal resource locators.

47. A network-based link message system in accordance with claim 40, wherein:

said session link authenticator comprises a cryptographic function of contents of said session link message based on a cryptographic key; and

said computer to which said client computer is programmed to cause said session link message to be sent is programmed to verify that said session link authenticator was created using said cryptographic key.

48. A method of operating a server computer in a network-based link message system comprising at least one client computer for operation by a client user and at least one server computer for operation by a server user, said client computer and said server computer being interconnected by a computer network, said method comprising the steps of:

receiving, at said server computer, an initial link message sent to said server computer by said client computer;

creating, based on information contained in said initial link message, a session link message that encodes a state of interaction between said client computer and said server computer, said session link message comprising a session link authenticator, computed by a cryptographic function of said session link contents, for authenticating said session link message; and

causing said session link message to be sent to said client computer;

said client computer being programmed to cause said session link message to be sent to a computer in said network that is programmed to authenticate said session link message by examining said session link authenticator and that is programmed to respond to said session link message based on said state of said interaction between said client computer and said server computer.

* * * * *

UNITED STATES PATENT AND TRADEMARK OFFICE
Certificate

Patent No. 5,715,314

Patented: February 3, 1998

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without any deceptive intent, improperly sets forth the inventorship.

Accordingly, it is hereby certified that the correct inventorship of this patent is: Andrew C. Payne, Lincoln, MA; Lawrence C. Stewart, Burlington, MA; and G. Winfield Treese, Wayland, MA.

Signed and Sealed this Sixth Day of April 2004.

THOMAS H. TARCZA
Supervisory Patent Examiner
Art Unit 3662



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(12) **EX PARTE REEXAMINATION CERTIFICATE** (5932nd)
United States Patent
Payne et al. (10) **Number:** **US 5,715,314 C1**
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(54) **NETWORK SALES SYSTEM**

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claimer.

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(57)

ABSTRACT(51) **Int. Cl.**

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G06Q 10/00 (2006.01)
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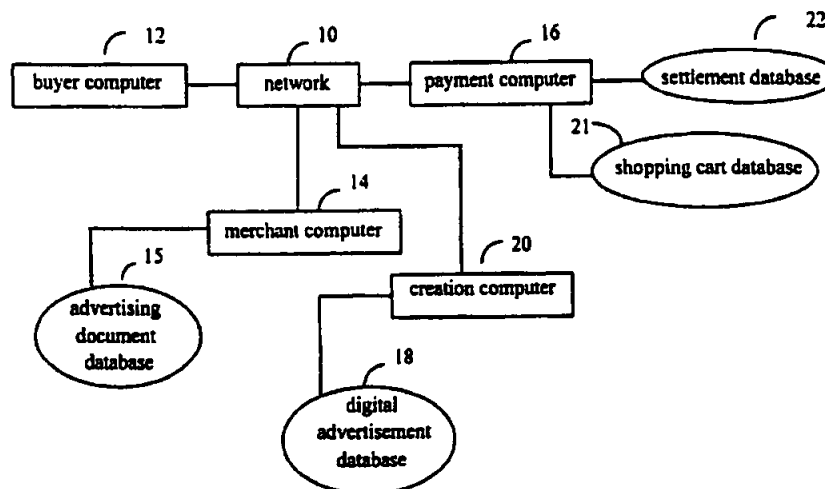
(52) **U.S. Cl.** **705/78; 705/26; 705/75;**
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(58) **Field of Classification Search** None
See application file for complete search history.

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A network-based sales system includes at least one buyer computer for operation by a user desiring to buy a product, at least one merchant computer, and at least one payment computer. The buyer computer, the merchant computer, and the payment computer are interconnected by a computer network. The buyer computer is programmed to receive a user request for purchasing a product, and to cause a payment message to be sent to the payment computer that comprises a product identifier identifying the product. The payment computer is programmed to receive the payment message, to cause an access message to be created that comprises the product identifier and an access message authenticator based on a cryptographic key, and to cause the access message to be sent to the merchant computer. The merchant computer is programmed to receive the access message, to verify the access message authenticator to ensure that the access message authenticator was created using the cryptographic key, and to cause the product to be sent to the user desiring to buy the product.



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EX PARTE

REEXAMINATION CERTIFICATE
ISSUED UNDER 35 U.S.C. 307THE PATENT IS HEREBY AMENDED AS
INDICATED BELOW.

Matter enclosed in heavy brackets [] appeared in the patent, but has been deleted and is no longer a part of the patent; matter printed in italics indicates additions made to the patent.

AS A RESULT OF REEXAMINATION, IT HAS BEEN DETERMINED THAT:

The patentability of claims 1-48 is confirmed.

New claims 49-168 are added and determined to be patentable.

49. A network-based sales system in accordance with claim 34, wherein the buyer computer activates the payment message by transmitting a message to the shopping cart computer that causes the payment message to be activated.

50. A network-based sales system in accordance with claim 34, wherein the network is a public packet switched network.

51. A network-based sales system in accordance with claim 34, wherein the network is an Internet.

52. A network-based sales system in accordance with claim 34, further comprising:

a merchant computer that is interconnected with the buyer computer and shopping cart computer by the computer network; and

an advertising document database;

wherein the merchant computer is programmed to fetch an advertising document from the advertising document database.

53. A network-based sales system in accordance with claim 52, wherein the merchant computer is programmed to send one or more advertising documents to the buyer computer.

54. A network-based sales system in accordance with claim 53, wherein the merchant computer is programmed to provide a product requested by the user.

55. A network-based sales system in accordance with claim 54, wherein the merchant computer is programmed to respond to payment orders from the buyer computer without the merchant computer having to communicate directly with the shopping cart computer to ensure that the user is authorized to purchase the product;

wherein the merchant computer is programmed to respond to payment orders from the buyer computer without the merchant computer having to store information in a database regarding which buyers are authorized to purchase which products.

56. A network-based sales system in accordance with claim 53, wherein the advertisement documents are in the form of summaries of newspaper or newsletter articles;

wherein prior to a user's product request, the merchant computer sends an advertising document to the buyer computer.

57. A network-based sales system in accordance with claim 34, wherein the buyer computer transmits an initial link that comprises information from which the shopping cart computer can create a session link message;

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wherein the session link is transmitted from the shopping cart computer to the buyer computer;

wherein the session link message includes a session link authenticator for use by a computer to authenticate the session link message.

58. A network-based sales system in accordance with claim 57, wherein the session link authenticator is a cryptographic function of the session link contents.

59. A network-based sales system in accordance with claim 58, wherein the buyer computer is programmed to cause the session link message to be sent to a computer in the network which is programmed to authenticate the session link message by examining the session link authenticator and which is programmed to respond to the session link message based on state of the interaction between the buyer computer and the shopping cart computer.

60. A network-based sales system in accordance with claim 34, wherein at least one of the requests comprises a shopping cart URL.

61. A network-based sales system in accordance with claim 60, wherein the shopping cart URL comprises a domain identifier.

62. A network-based sales system in accordance with claim 60, wherein the shopping cart URL comprises a merchant identifier.

63. A network-based sales system in accordance with claim 60, wherein the shopping cart URL comprises a merchant account identifier.

64. A network-based sales system in accordance with claim 60, wherein the shopping cart URL comprises a payment amount.

65. A network-based sales system in accordance with claim 60, wherein the shopping cart URL comprises a product identifier.

66. A network-based sales system in accordance with claim 60, wherein the shopping cart URL comprises a duration time.

67. A network-based sales system in accordance with claim 60, wherein the shopping cart URL comprises an expiration time.

68. A network-based sales system in accordance with claim 67, wherein the shopping cart computer transmits a document to the buyer computer indicating that the expiration time has passed.

69. A network-based sales system in accordance with claim 60, wherein the URL comprises a buyer network address.

70. A network-based sales system in accordance with claim 69, wherein the buyer computer network address is verified by matching it with a network address specified in the shopping cart URL.

71. A network-based sales system in accordance with claim 70, wherein if the computer network address verification fails, then the shopping cart computer sends a document to the buyer computer indicating that access is not allowed.

72. A network-based sales system in accordance with claim 60, wherein the shopping cart URL comprises an authenticator based on a cryptographic key;

wherein the authenticator is a function of contents of the shopping cart URL;

wherein the shopping cart computer verifies whether the shopping cart URL authenticator was created from the contents of the shopping cart URL using a cryptographic key.

73. A network-based sales system in accordance with claim 72, wherein if the verification fails, the shopping cart

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computer transmits a document to the buyer computer indicating that access is denied.

74. A network-based sales system in accordance with claim 34, wherein the buyer computer activates the payment message by transmitting a message to the shopping cart computer that causes the payment message to be activated; wherein the shopping cart computer transmits a payment confirmation document to the buyer computer.

75. A network-based sales system in accordance with claim 74, wherein the payment confirmation document includes an open link and a continue link.

76. A network-based sales system in accordance with claim 75, wherein the shopping cart computer opens a new account in response to the user selecting the open link.

77. A network-based sales system in accordance with claim 76, wherein the buyer computer sends a payment URL to the shopping cart computer that indicates that an account does not yet exist.

78. A network-based sales system in accordance with claim 77, wherein the shopping cart computer creates a new account document.

79. A network-based sales system in accordance with claim 78, wherein the shopping cart computer transmits the new account document to the buyer computer.

80. A network-based sales system in accordance with claim 79, wherein the new account document comprises a challenge form that requests account information to be entered by the user.

81. A network-based sales system in accordance with claim 80, wherein the account information comprises a new account name and account password.

82. A network-based sales system in accordance with claim 80, wherein the account information comprises: a new account name, an account password, a credit card number, and an expiration date of the credit card.

83. A network-based sales system in accordance with claim 80, wherein the account information comprises security information.

84. A network-based sales system in accordance with claim 34, wherein the shopping cart computer, in response to the plurality of shopping cart messages, causes an account name and password request message to be transmitted to the buyer computer.

85. A network-based sales system in accordance with claim 34, further comprising:

a merchant computer that is interconnected with the buyer and shopping cart computers by the computer network; and

an advertising document database;

wherein the merchant computer is programmed to fetch an advertising document from the advertising document database;

wherein the advertising document database is local to the merchant computer.

86. A network-based sales system in accordance with claim 85, wherein a creation computer updates the remote advertising document database on the merchant computer.

87. A network-based sales system in accordance with claim 85, wherein the buyer computer transmits a purchase product message to the merchant computer, and, in response, the merchant computer provides a payment URL to the buyer computer.

88. A network-based sales system in accordance with claim 87, wherein the buyer computer transmits the payment URL to a payment computer.

89. A network-based sales system in accordance with claim 88, wherein the payment computer is the shopping cart computer.

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90. A network-based sales system in accordance with claim 88, wherein the payment URL comprises an authenticator based on a cryptographic key;

wherein the authenticator is a function of contents of the payment URL.

91. A network-based sales system in accordance with claim 90, wherein the payment computer verifies whether the payment URL authenticator was created from the contents of the payment URL using a cryptographic key;

if the verification fails, the payment computer transmits a document to the buyer computer indicating that access is denied.

92. A network-based sales system in accordance with claim 88, wherein the payment URL further comprises an expiration time.

93. A network-based sales system in accordance with claim 92, wherein the payment computer transmits a document to the buyer computer indicating that the expiration time has passed.

94. A network-based sales system in accordance with claim 88, wherein the payment URL comprises a buyer network address.

95. A network-based sales system in accordance with claim 94, wherein the buyer computer network address is verified by matching it with the network address specified in the payment URL;

if the verification fails, then the shopping cart computer sends a document to the buyer computer indicating that access is not allowed.

96. A network-based sales system in accordance with claim 88, wherein the payment computer transmits a payment confirmation document to the buyer computer;

wherein the payment confirmation document includes an open link and a continue link;

wherein in response to the user selecting the continue link, the payment computer instructs the buyer computer to provide an account name and password that have previously been provided by the buyer computer to the payment computer.

97. A network-based sales system in accordance with claim 96, wherein the buyer computer prompts the user for the account name and password by creating an account name prompt and a password prompt.

98. A network-based sales system in accordance with claim 97, wherein the payment computer verifies that the account name and password entered by the user match a previously provided account name and password.

99. A network-based sales system in accordance with claim 98, wherein if the verification fails, then the payment computer sends a document to the buyer computer indicating that access is not allowed.

100. A network-based sales system in accordance with claim 98, wherein if a payment amount exceeds a threshold, then the user is prompted for security information;

wherein the payment computer verifies that the security information matches a previously provided account name and password;

if the verification fails, then the payment computer sends a document to the buyer computer indicating that access is not allowed.

101. A network-based sales system in accordance with claim 98, further comprising a settlement database that is in communication with the payment computer;

wherein the settlement database is used to determine whether the user has unexpired access to a domain identified in the payment message;

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wherein the user is presented with an option to repurchase or to use the unexpired access.

102. A network-based sales system in accordance with claim 101, wherein the purchase of a product in a certain domain by a user account entitles access to other products in the domain for free or at a reduced price.

103. A network-based sales system in accordance with claim 98, wherein the payment computer verifies whether the user account has sufficient funds or credit that satisfies a payment amount specified in the payment message,

if the verification fails, then the payment computer sends a document to the buyer computer indicating that the user has insufficient funds.

104. A network-based sales system in accordance with claim 98, wherein the payment computer records an end of duration time in a settlement database.

105. A network-based sales system in accordance with claim 98, wherein the payment computer creates an access URL including an access URL authenticator that is a digital signature generated based on a cryptographic key;

wherein the access URL authenticator is a hash of other information in the access URL;

wherein the payment computer sends a redirect to the access URL to the buyer computer;

wherein the buyer computer sends the access URL to a merchant computer.

106. A network-based sales system in accordance with claim 105, wherein the merchant computer verifies whether the access URL authenticator was created from said other information in the access URL using the cryptographic key;

if the verification fails, then the merchant computer sends a document to the buyer computer indicating that access is not allowed.

107. A network-based sales system in accordance with claim 105, wherein the merchant computer verifies whether a duration time for access has expired;

if the verification fails, then the merchant computer sends a document to the buyer computer indicating that the duration time has expired.

108. A network-based sales system in accordance with claim 105, wherein the merchant computer verifies that a buyer computer network address is the same as a buyer network address contained in the access URL;

if the verification fails, then the merchant computer sends a document to the buyer computer indicating that access is not allowed.

109. The method of claim 39, wherein the buyer computer activates the payment message by transmitting a message to the shopping cart computer that causes the payment message to be activated.

110. The method of claim 39, wherein the network is a public packet switched network.

111. The method of claim 39, wherein the network is an Internet.

112. The method of claim 39, wherein a merchant computer is interconnected with the buyer computer and shopping cart computer by the computer network;

wherein the merchant computer is programmed to fetch an advertising document from an advertising document database.

113. The method of claim 112, wherein the merchant computer is programmed to send one or more advertising documents to the buyer computer.

114. The method of claim 113, wherein the merchant computer is programmed to provide a product requested by the user.

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115. The method of claim 114, wherein the merchant computer is programmed to respond to payment orders from the buyer computer without the merchant computer having to communicate directly with the shopping cart computer to ensure that the user is authorized to purchase the product;

wherein the merchant computer is programmed to respond to payment orders from the buyer computer without the merchant computer having to store information in a database regarding which buyers are authorized to purchase which products.

116. The method of claim 113, wherein the advertisement documents are in the form of summaries of newspaper or newsletter articles;

wherein prior to a user's product request, the merchant computer sends an advertising document to the buyer computer.

117. The method of claim 39, wherein the buyer computer transmits an initial link that comprises information from which the shopping cart computer can create a session link message;

wherein the session link is transmitted from the shopping cart computer to the buyer computer;

wherein the session link message includes a session link authenticator for use by a computer to authenticate the session link message.

118. The method of claim 117, wherein the session link authenticator is a cryptographic function of the session link contents.

119. The method of claim 118, wherein the buyer computer is programmed to cause the session link message to be sent to a computer in the network which is programmed to authenticate the session link message by examining the session link authenticator and which is programmed to respond to the session link message based on state of the interaction between the buyer computer and the shopping cart computer.

120. The method of claim 39, wherein at least one of the requests comprises a shopping cart URL.

121. The method of claim 120, wherein the shopping cart URL comprises a domain identifier.

122. The method of claim 120, wherein the shopping cart URL comprises a merchant identifier.

123. The method of claim 120, wherein the shopping cart URL comprises a merchant account identifier.

124. The method of claim 120, wherein the shopping cart URL comprises a payment amount.

125. The method of claim 120, wherein the shopping cart URL comprises a product identifier.

126. The method of claim 120, wherein the shopping cart URL comprises a duration time.

127. The method of claim 120, wherein the shopping cart URL comprises an expiration time.

128. The method of claim 127, wherein the shopping cart computer transmits a document to the buyer computer indicating that the expiration time has passed.

129. The method of claim 120, wherein the URL comprises a buyer network address.

130. The method of claim 129, wherein the buyer computer network address is verified by matching it with a network address specified in the shopping cart URL.

131. The method of claim 130, wherein if the computer network address verification fails, then the shopping cart computer sends a document to the buyer computer indicating that access is not allowed.

132. The method of claim 120, wherein the shopping cart URL comprises an authenticator based on a cryptographic key;

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wherein the authenticator is a function of contents of the shopping cart URL;

wherein the shopping cart computer verifies whether the shopping cart URL authenticator was created from the contents of the shopping cart URL using a cryptographic key.

133. The method of claim 132, wherein if the verification fails, the shopping cart computer transmits a document to the buyer computer indicating that access is denied.

134. The method of claim 39, wherein the buyer computer activates the payment message by transmitting a message to the shopping cart computer that causes the payment message to be activated;

wherein the shopping cart computer transmits a payment confirmation document to the buyer computer.

135. The method of claim 134, wherein the payment confirmation document includes an open link and a continue link.

136. The method of claim 135, wherein the shopping cart computer opens a new account in response to the user selecting the open link.

137. The method of claim 136, wherein the buyer computer sends a payment URL to the shopping cart computer that indicates that an account does not yet exist.

138. The method of claim 137, wherein the shopping cart computer creates a new account document.

139. The method of claim 138, wherein the shopping cart computer transmits the new account document to the buyer computer.

140. The method of claim 139, wherein the new account document comprises a challenge form that requests account information to be entered by the user.

141. The method of claim 140, wherein the account information comprises a new account name and account password.

142. The method of claim 140, wherein the account information comprises: a new account name, an account password, a credit card number, and an expiration date of the credit card.

143. The method of claim 140, wherein the account information comprises security information.

144. The method of claim 39, wherein the shopping cart computer, in response to the plurality of shopping cart messages, causes an account name and password request message to be transmitted to the buyer computer.

145. The method of claim 39, wherein a merchant computer is interconnected with the buyer and shopping cart computers by the computer network;

wherein the merchant computer is programmed to fetch an advertising document from an advertising document database;

wherein the advertising document database is local to the merchant computer.

146. The method of claim 145, wherein a creation computer updates the remote advertising document database on the merchant computer.

147. The method of claim 145, wherein the buyer computer transmits a purchase product message to the merchant computer, and, in response, the merchant computer provides a payment URL to the buyer computer.

148. The method of claim 147, wherein the buyer computer transmits the payment URL to a payment computer.

149. The method of claim 148, wherein the payment computer is the shopping cart computer.

150. The method of claim 148, wherein the payment URL comprises an authenticator based on a cryptographic key;

wherein the authenticator is a function of contents of the payment URL.

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151. The method of claim 150, wherein the payment computer verifies whether the payment URL authenticator was created from the contents of the payment URL using a cryptographic key;

if the verification fails, the payment computer transmits a document to the buyer computer indicating that access is denied.

152. The method of claim 148, wherein the payment URL further comprises an expiration time.

153. The method of claim 152, wherein the payment computer transmits a document to the buyer computer indicating that the expiration time has passed.

154. The method of claim 148, wherein the payment URL comprises a buyer network address.

155. The method of claim 154, wherein the buyer computer network address is verified by matching it with the network address specified in the payment URL;

if the verification fails, then the shopping cart computer sends a document to the buyer computer indicating that access is not allowed.

156. The method of claim 148, wherein the payment computer transmits a payment confirmation document to the buyer computer;

wherein the payment confirmation document includes an open link and a continue link;

wherein in response to the user selecting the continue link, the payment computer instructs the buyer computer to provide an account name and password that have previously been provided by the buyer computer to the payment computer.

157. The method of claim 156, wherein the buyer computer prompts the user for the account name and password by creating an account name prompt and a password prompt.

158. The method of claim 157, wherein the payment computer verifies that the account name and password entered by the user match a previously provided account name and password.

159. The method of claim 158, wherein if the verification fails, then the payment computer sends a document to the buyer computer indicating that access is not allowed.

160. The method of claim 158, wherein if a payment amount exceeds a threshold, then the user is prompted for security information;

wherein the payment computer verifies that the security information matches a previously transmitted account name and password;

if the verification fails, then the payment computer sends a document to the buyer computer indicating that access is not allowed.

161. The method of claim 158, wherein a settlement database is used to determine whether the user has unexpired access to a domain identified in the payment message; wherein the user is presented with an option to repurchase or to use the unexpired access.

162. The method of claim 161, wherein the purchase of a product in a certain domain by a user account entitles access to other products in the domain for free or at a reduced price.

163. The method of claim 158, wherein the payment computer verifies whether the user account has sufficient funds or credit that satisfies a payment amount specified in the payment message,

if the verification fails, then the payment computer sends a document to the buyer computer indicating that the user has insufficient funds.

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164. The method of claim 158, wherein the payment computer records an end of duration time in a settlement database.

165. The method of claim 158, wherein the payment computer creates an access URL including an access URL authenticator that is a digital signature generated based on a cryptographic key;

wherein the access URL authenticator is a hash of other information in the access URL;

wherein the payment computer sends a redirect to the access URL to the buyer computer;

wherein the buyer computer sends the access URL to a merchant computer.

166. The method of claim 165, wherein the merchant computer verifies whether the access URL authenticator was created from said other information in the access URL using the cryptographic key;

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if the verification fails, then the merchant computer sends a document to the buyer computer indicating that access is not allowed.

167. The method of claim 165, wherein the merchant computer verifies whether a duration time for access has expired;

if the verification fails, then the merchant computer sends a document to the buyer computer indicating that the duration time has expired.

168. The method of claim 165, wherein the merchant computer verifies that a buyer computer network address is the same as a buyer network address contained in the access URL;

if the verification fails, then the merchant computer sends a document to the buyer computer indicating that access is not allowed.

* * * * *



US005909492A

United States Patent [19][11] **Patent Number:** **5,909,492****Payne et al.**[45] **Date of Patent:** **Jun. 1, 1999**[54] **NETWORK SALES SYSTEM**

[75] Inventors: **Andrew C. Payne**, Lincoln; **Lawrence C. Stewart**, Burlington, both of Mass.;
David J. Mackie, Brookdale, Calif.

[73] Assignee: **Open Market, Incorporated**,
 Cambridge, Mass.

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[21] Appl. No.: **08/878,396**[22] Filed: **Jun. 18, 1997****Related U.S. Application Data**

[63] Continuation of application No. 08/328,133, Oct. 24, 1994,
 Pat. No. 5,715,314.

[51] **Int. Cl.⁶** **H04L 9/00**

[52] **U.S. Cl.** **380/24; 380/23; 380/25;**
380/49; 380/50; 705/26; 705/27; 705/39;
705/40; 705/44

[58] **Field of Search** **380/4, 9, 21, 23,**
380/24, 25, 49, 50; 235/379, 380; 705/26,
27, 39, 40, 41, 42, 43, 44, 14, 16

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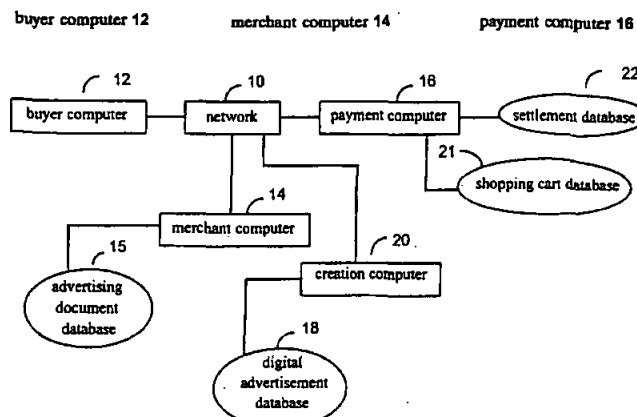
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Primary Examiner—Bernarr E. Gregory
Attorney, Agent, or Firm—Fish & Richardson P.C.

[57] **ABSTRACT**

A network-based sales system includes at least one buyer computer for operation by a user desiring to buy a product, at least one merchant computer, and at least one payment computer. The buyer computer, the merchant computer, and the payment computer are interconnected by a computer network. The buyer computer is programmed to receive a user request for purchasing a product, and to cause a payment message to be sent to the payment computer that comprises a product identifier identifying the product. The payment computer is programmed to receive the payment message, to cause an access message to be created that comprises the product identifier and an access message authenticator based on a cryptographic key, and to cause the access message to be sent to the merchant computer. The merchant computer is programmed to receive the access message, to verify the access message authenticator to ensure that the access message authenticator was created using the cryptographic key, and to cause the product to be sent to the user desiring to buy the product.

38 Claims, 25 Drawing Sheets

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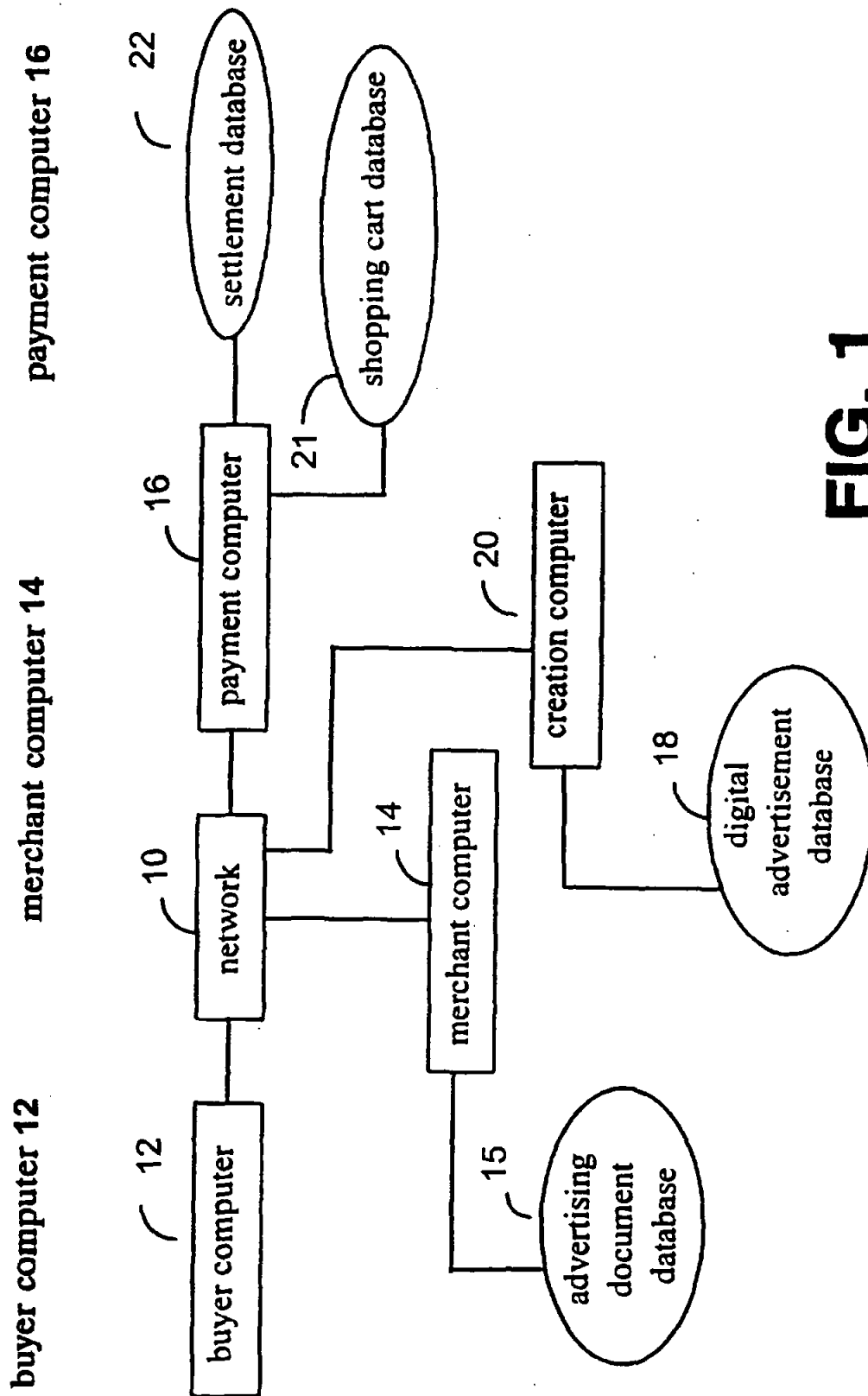
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**FIG. 1**

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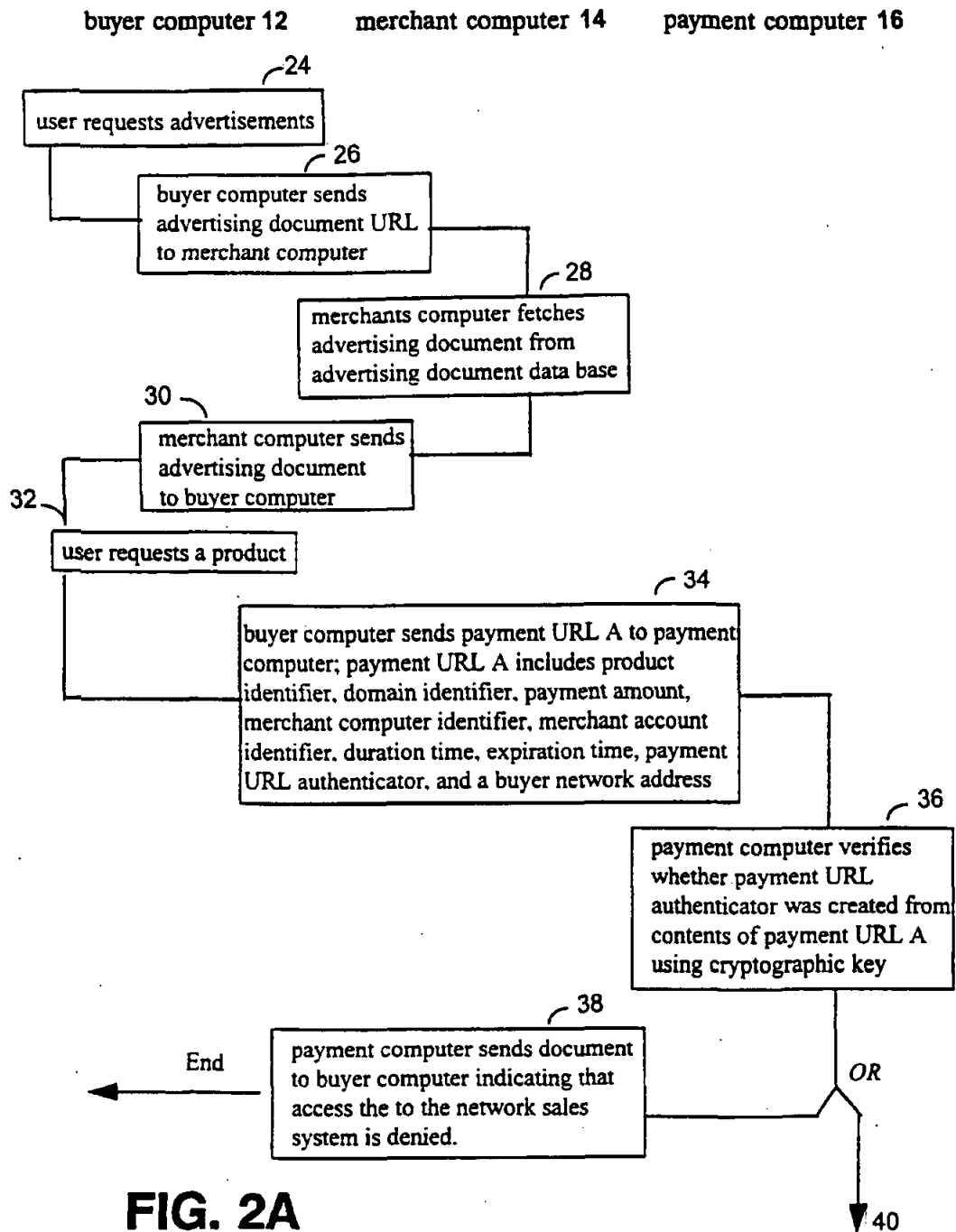


FIG. 2A

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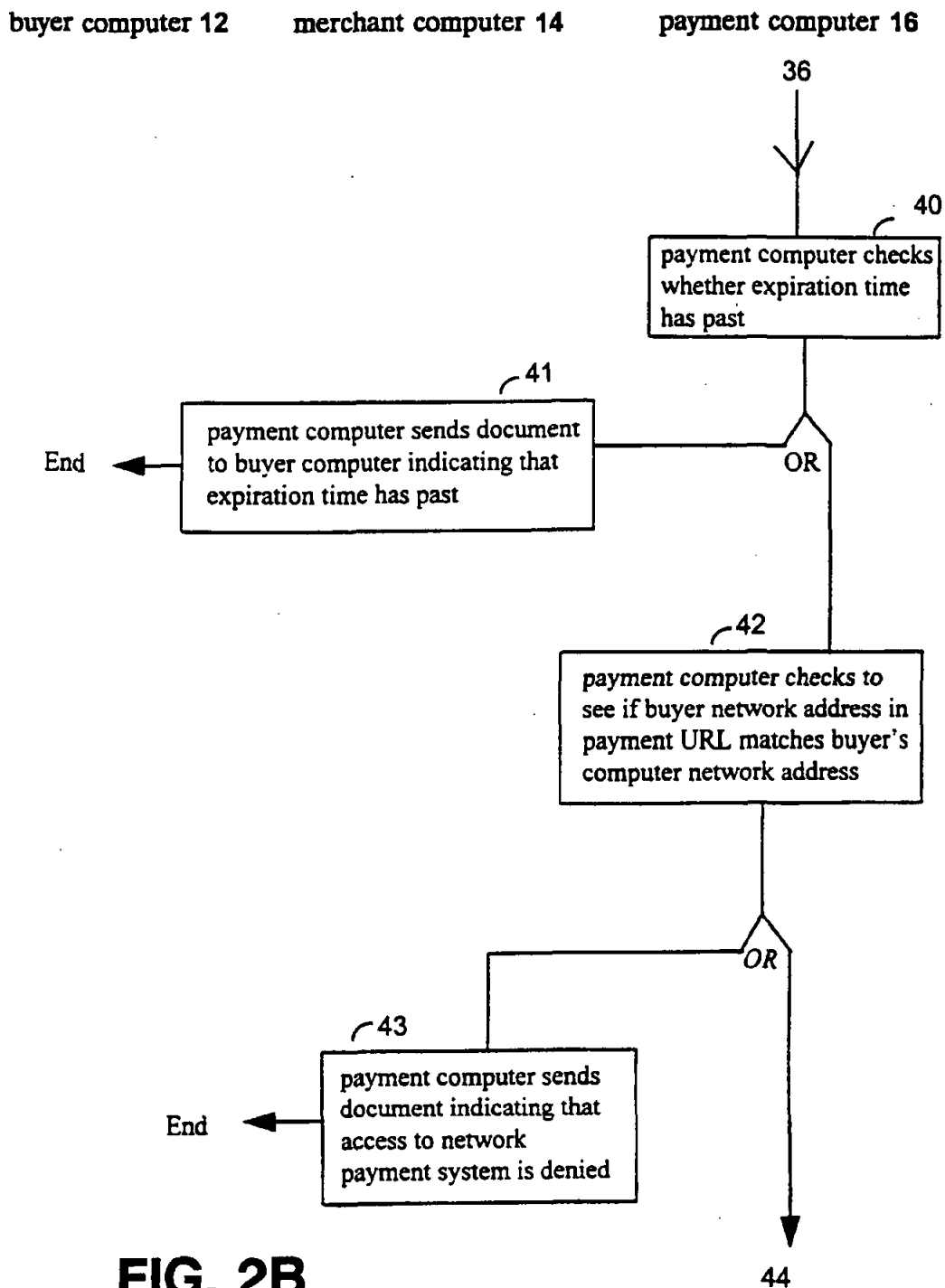


FIG. 2B

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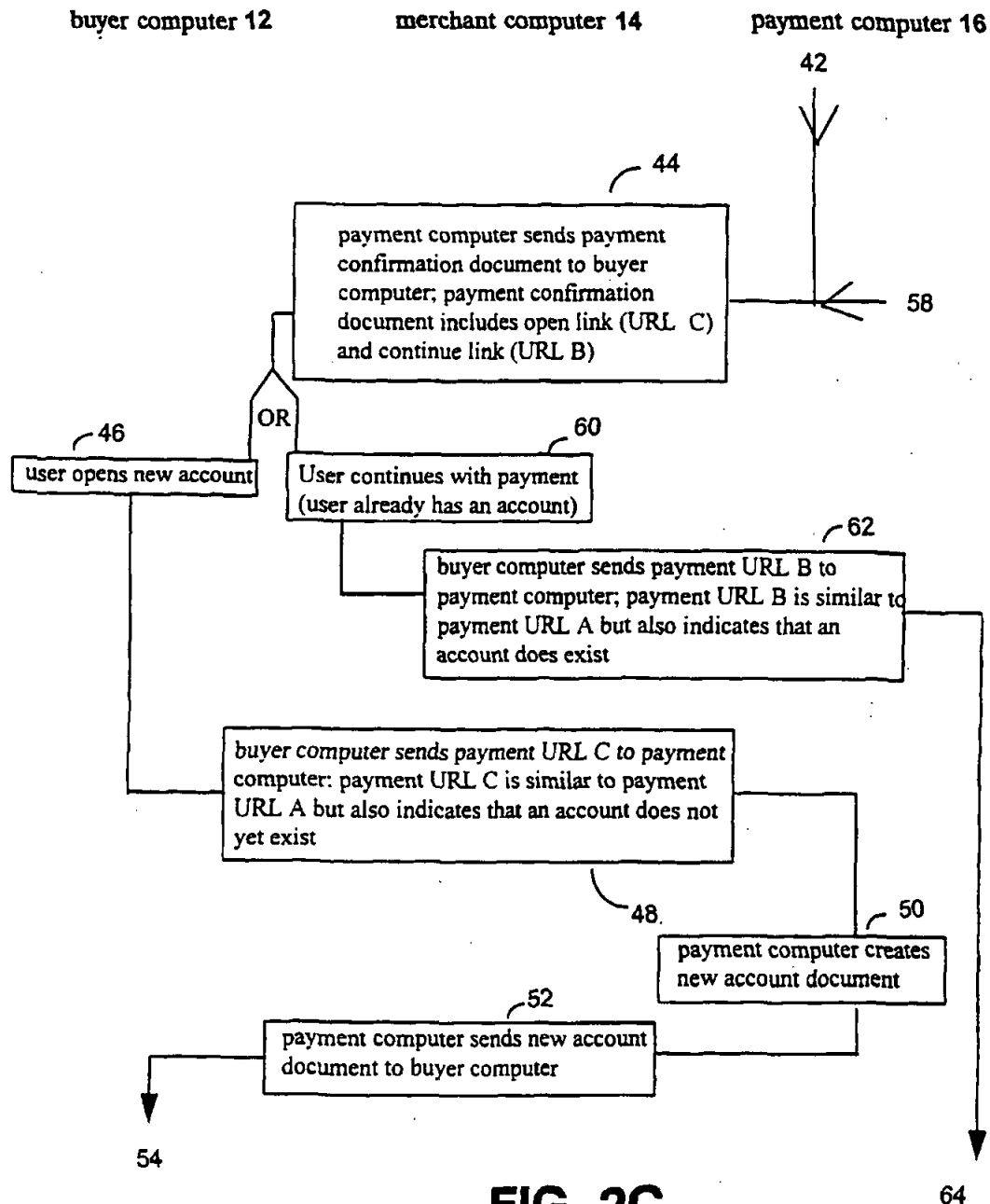


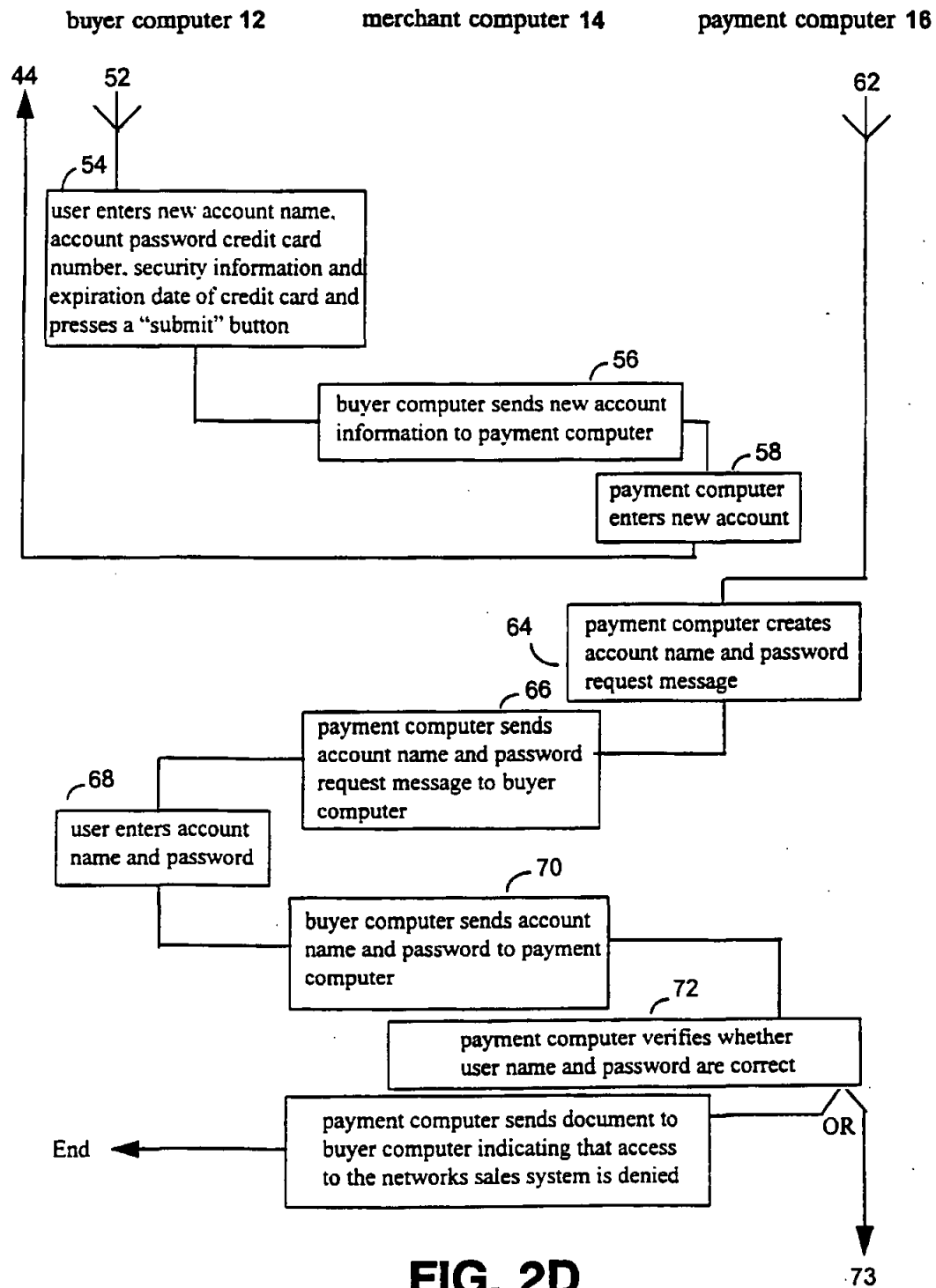
FIG. 2C

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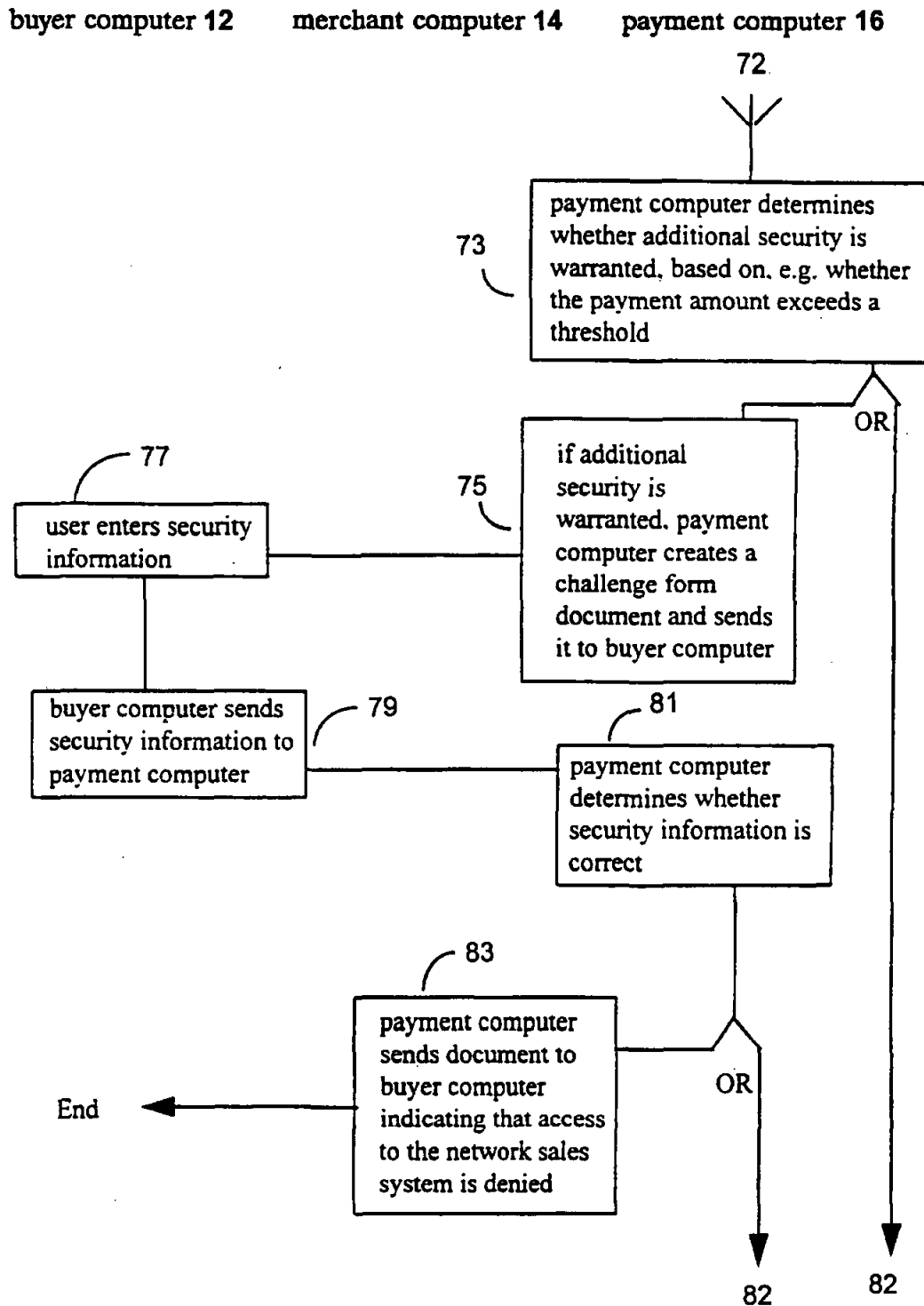


FIG. 2E

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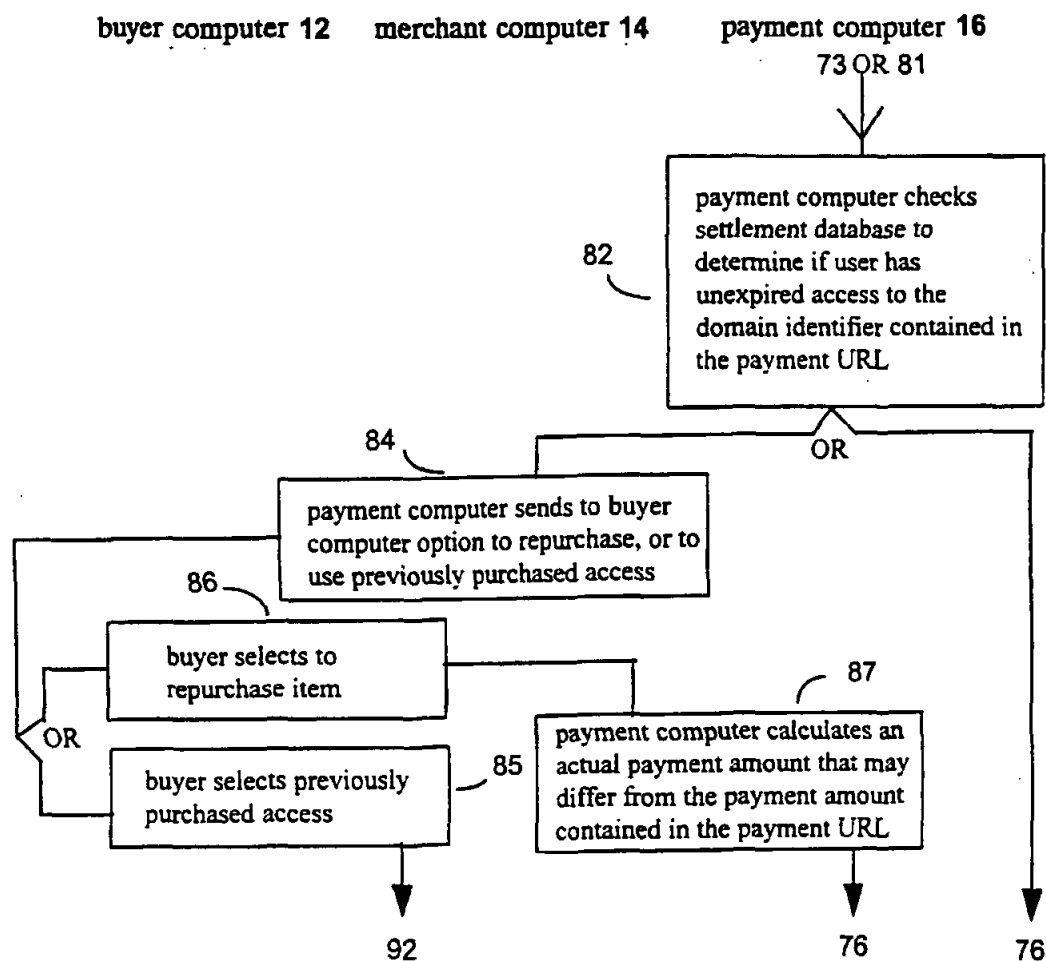


FIG. 2F

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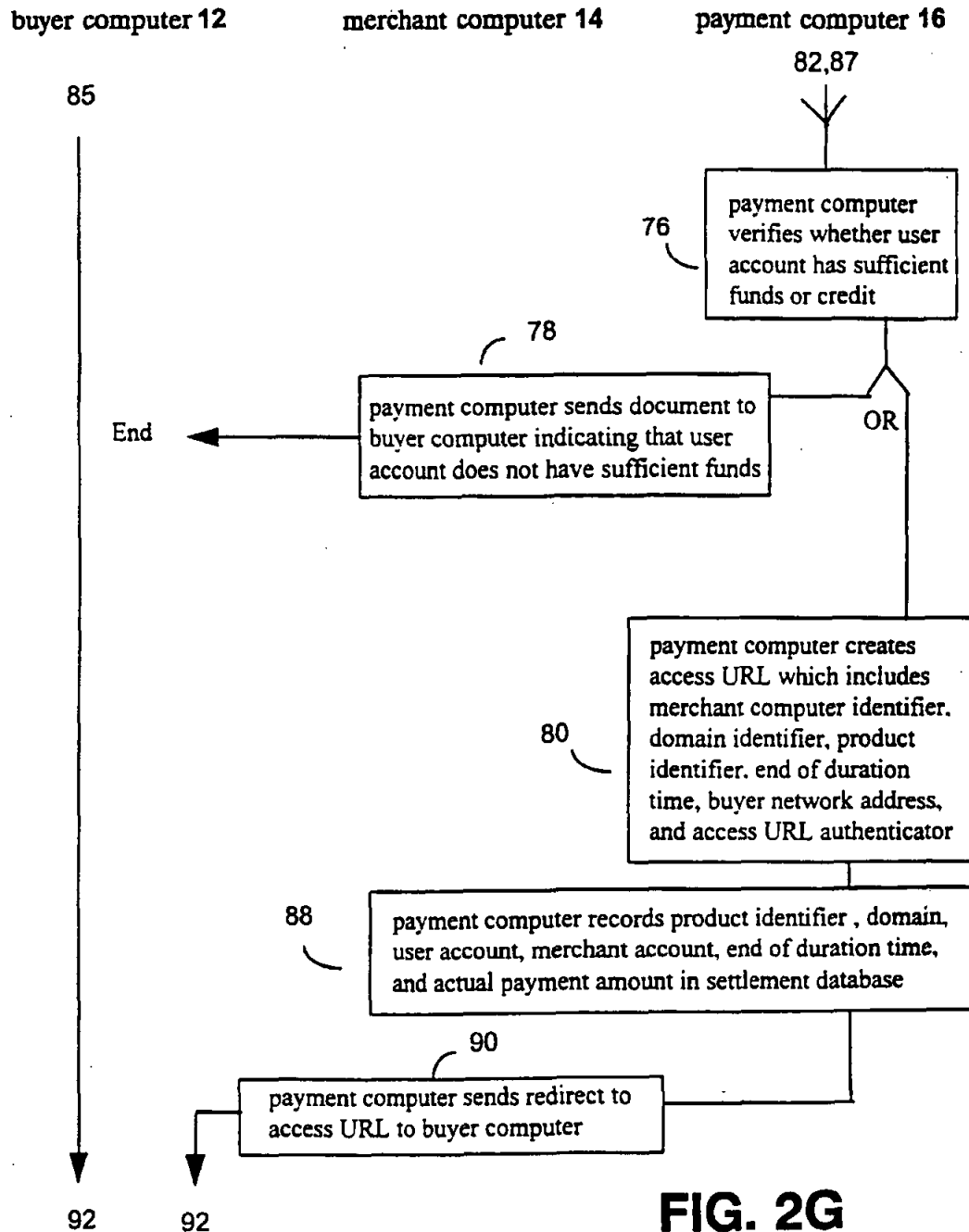


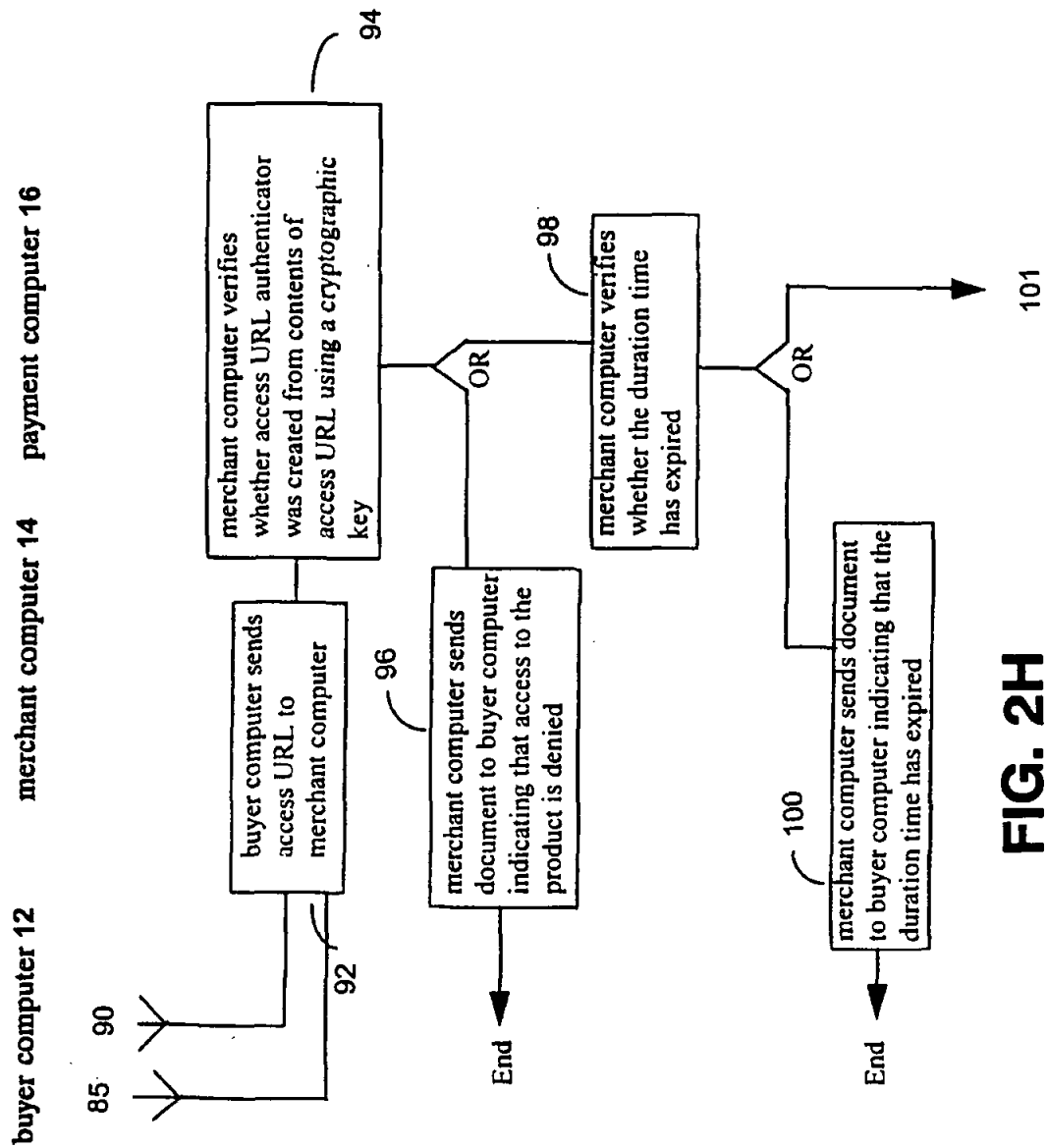
FIG. 2G

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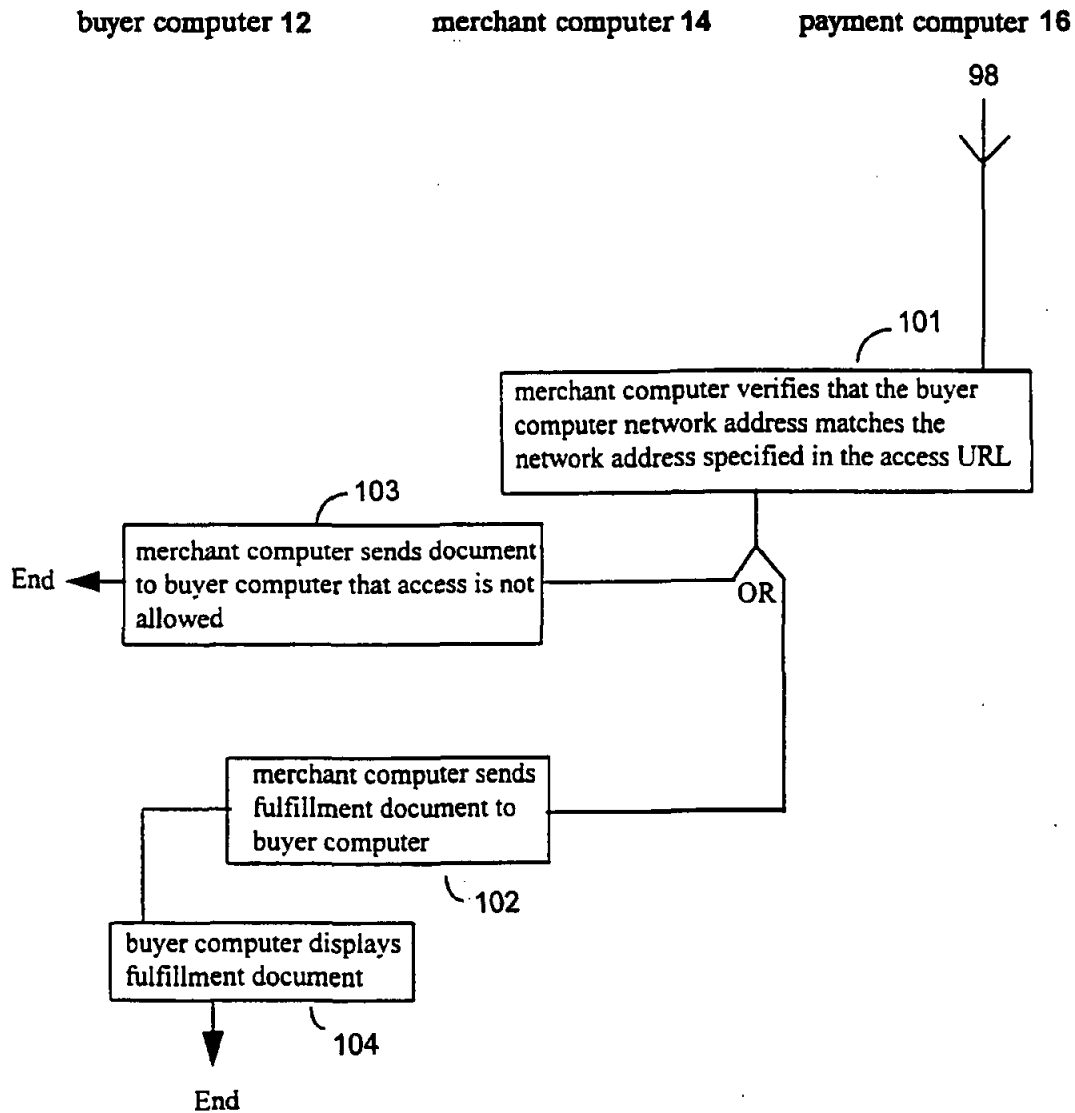


FIG. 2I

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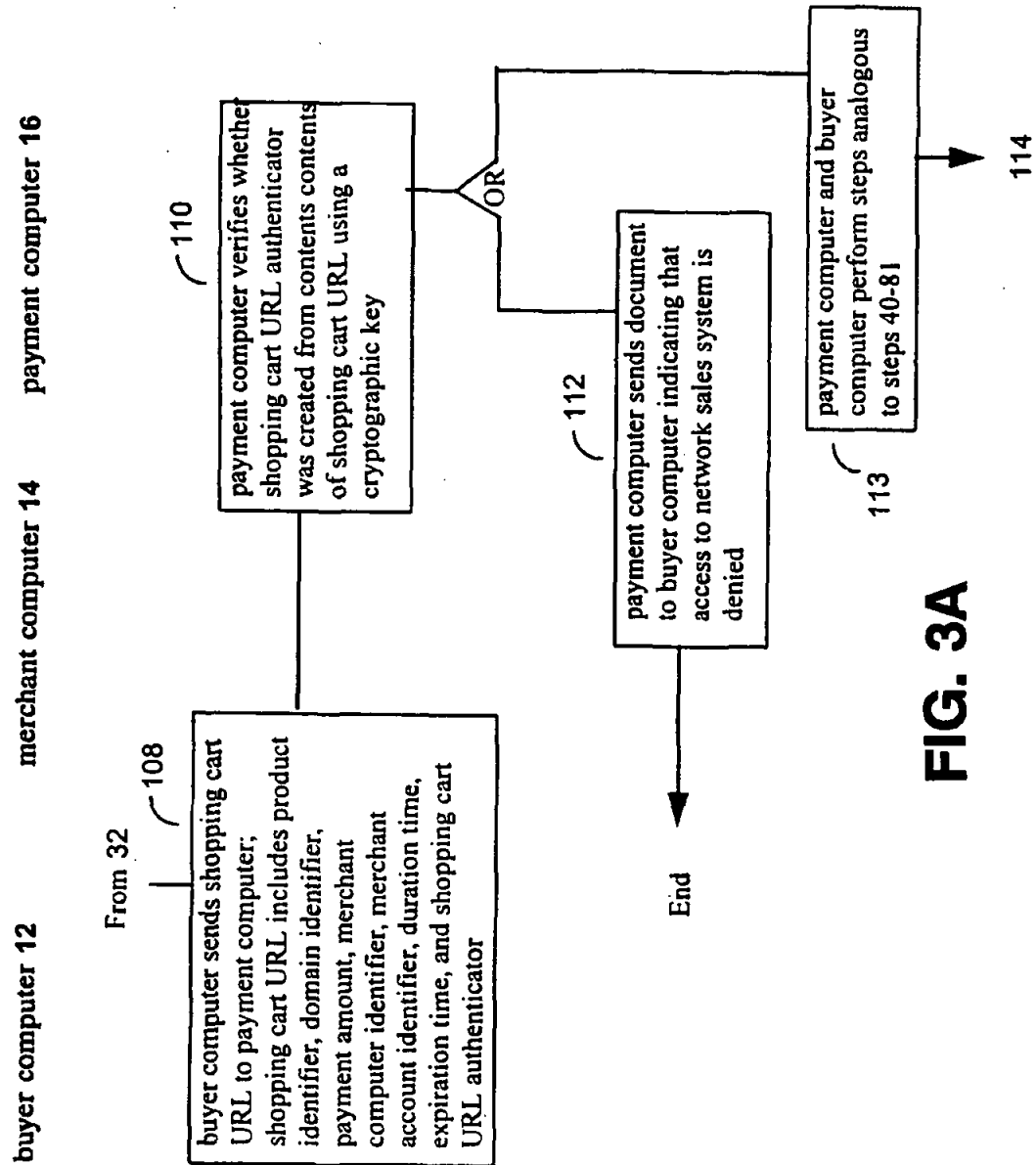


FIG. 3A

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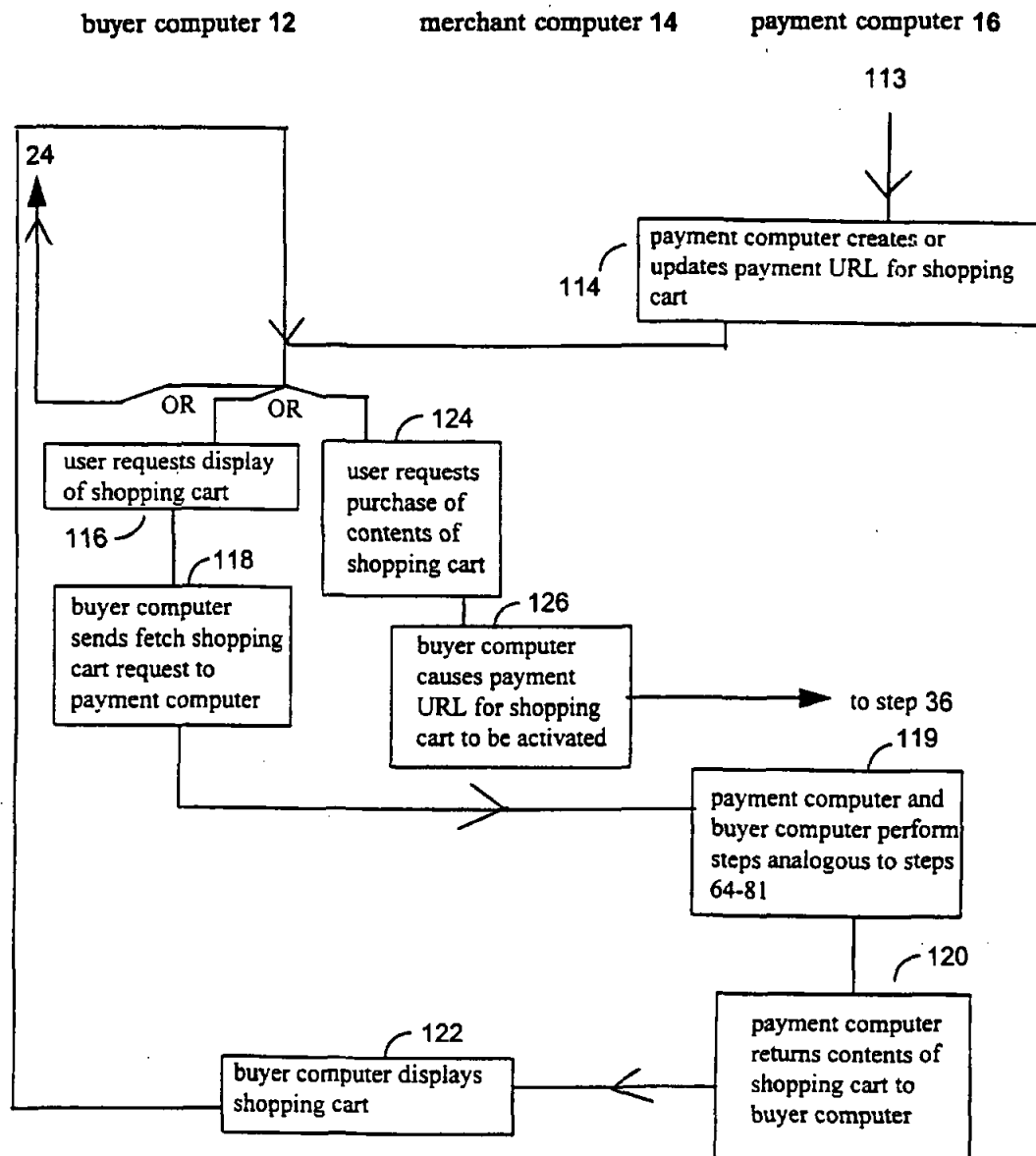


FIG. 3B

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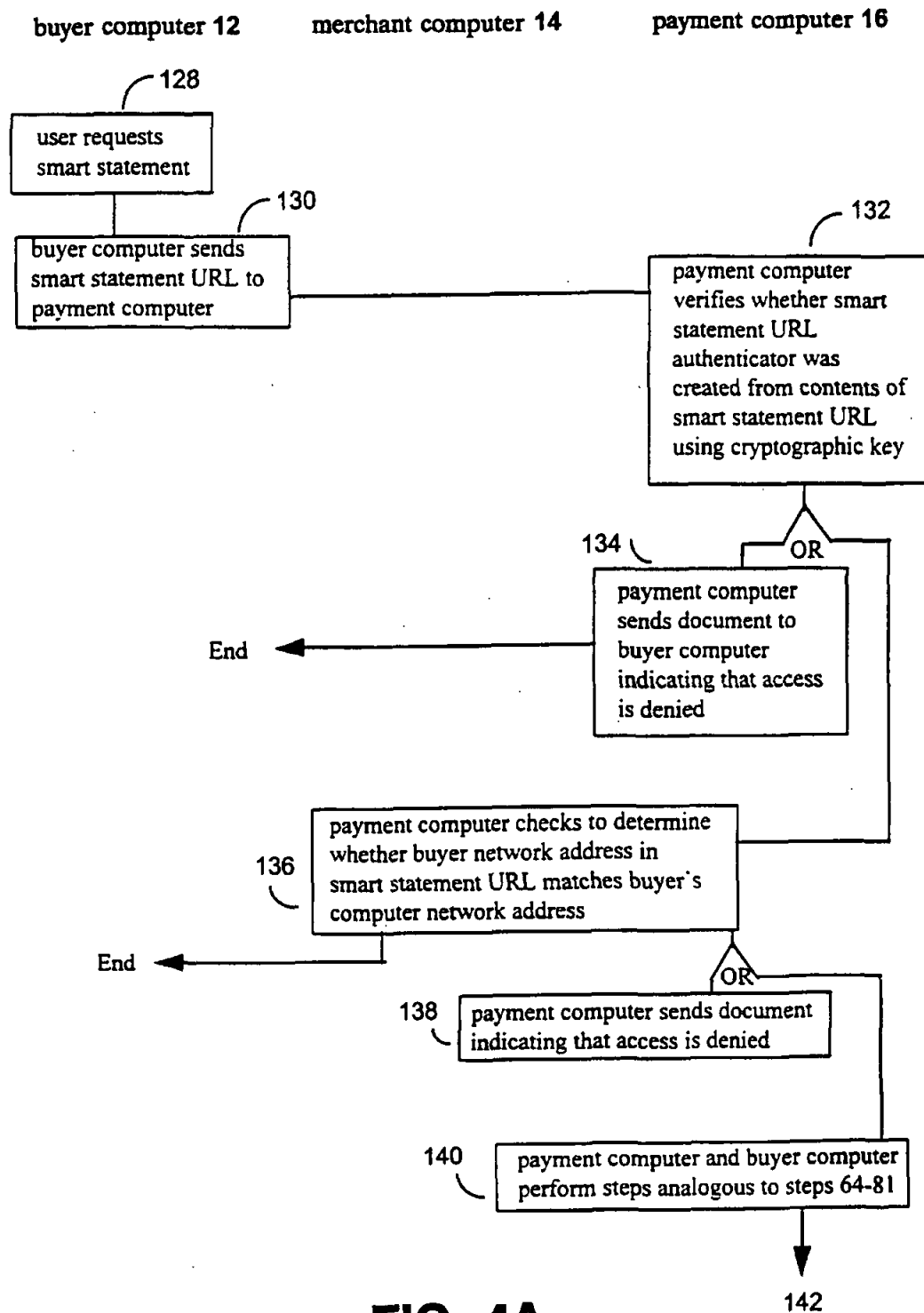


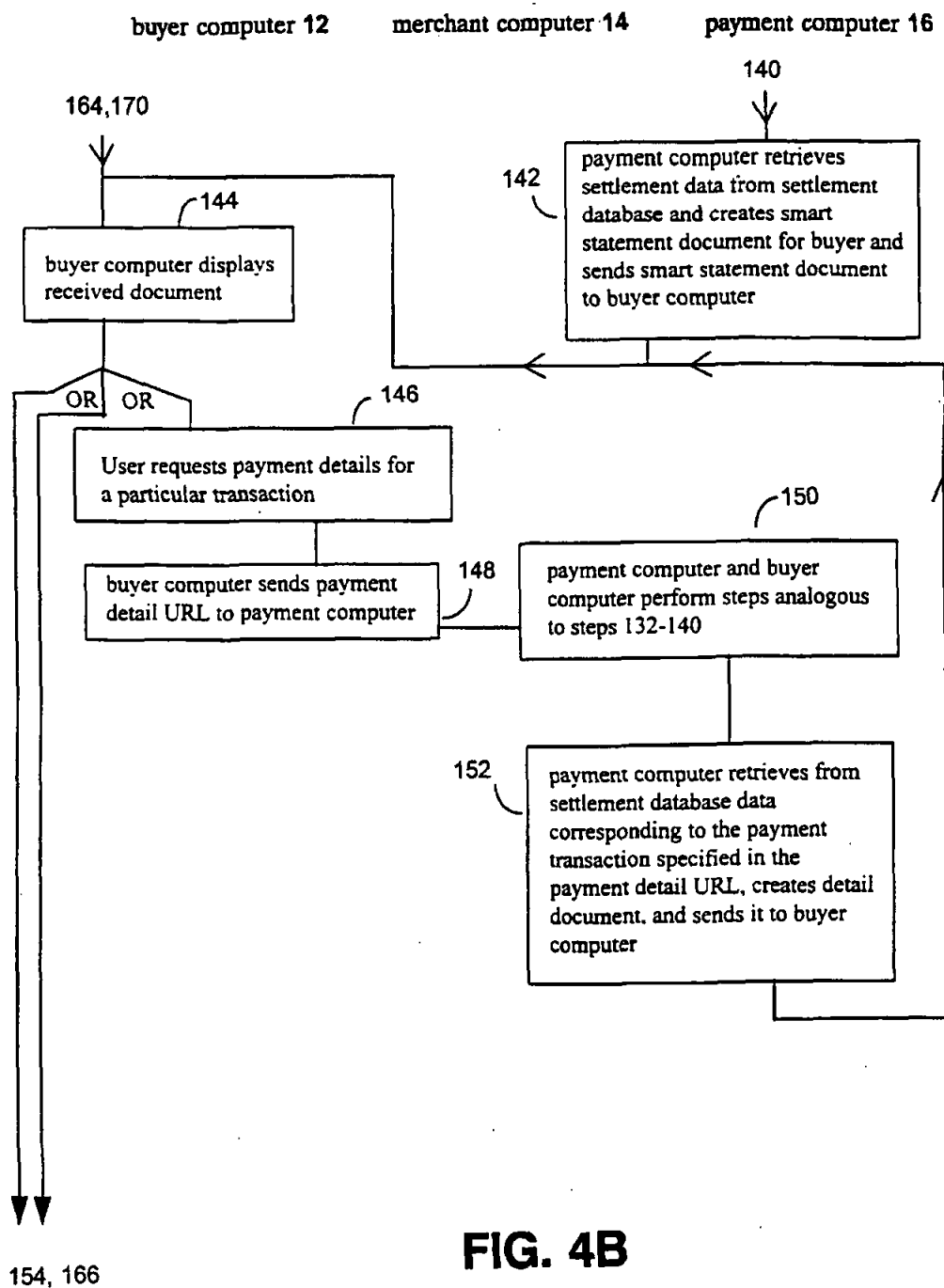
FIG. 4A

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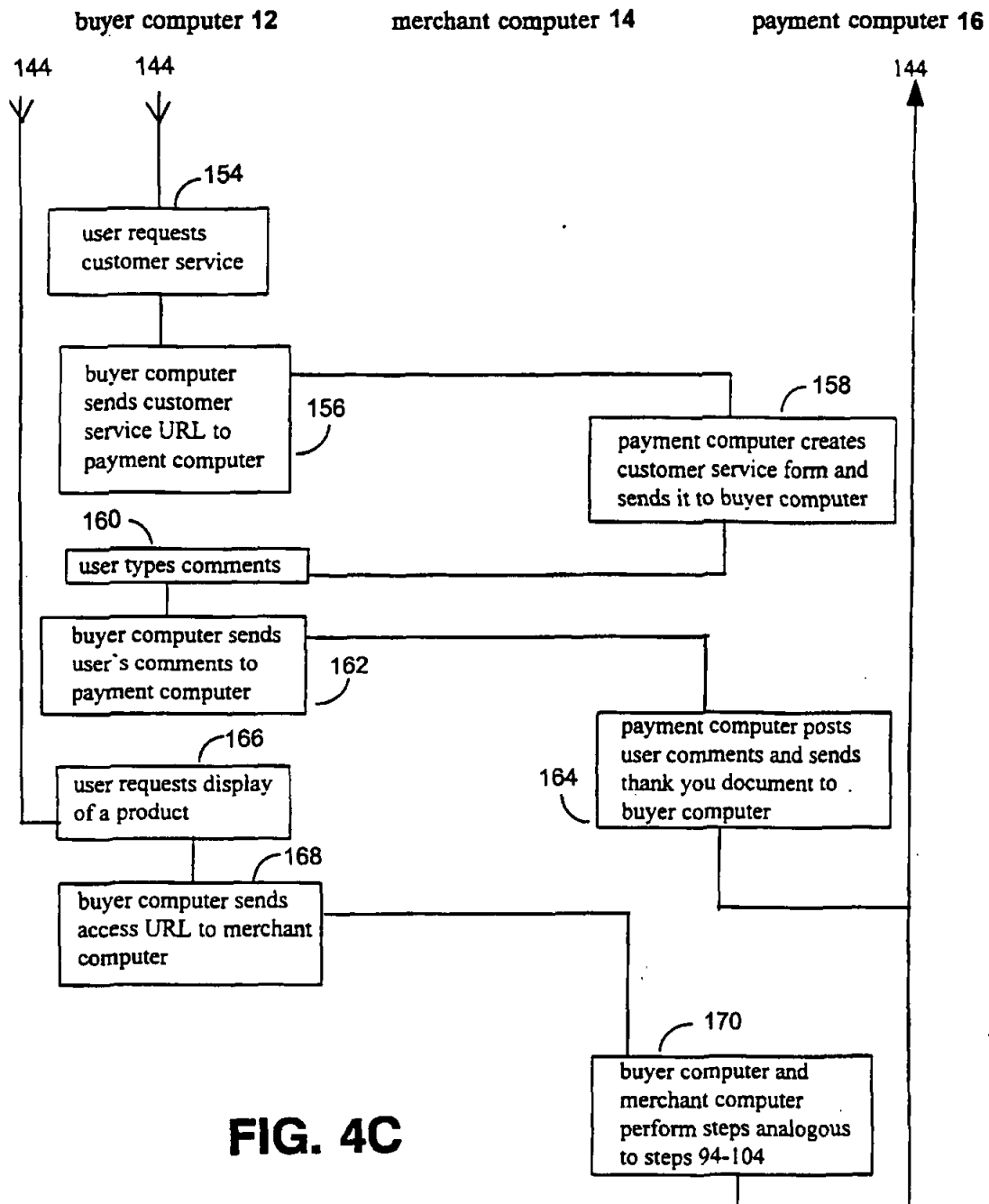


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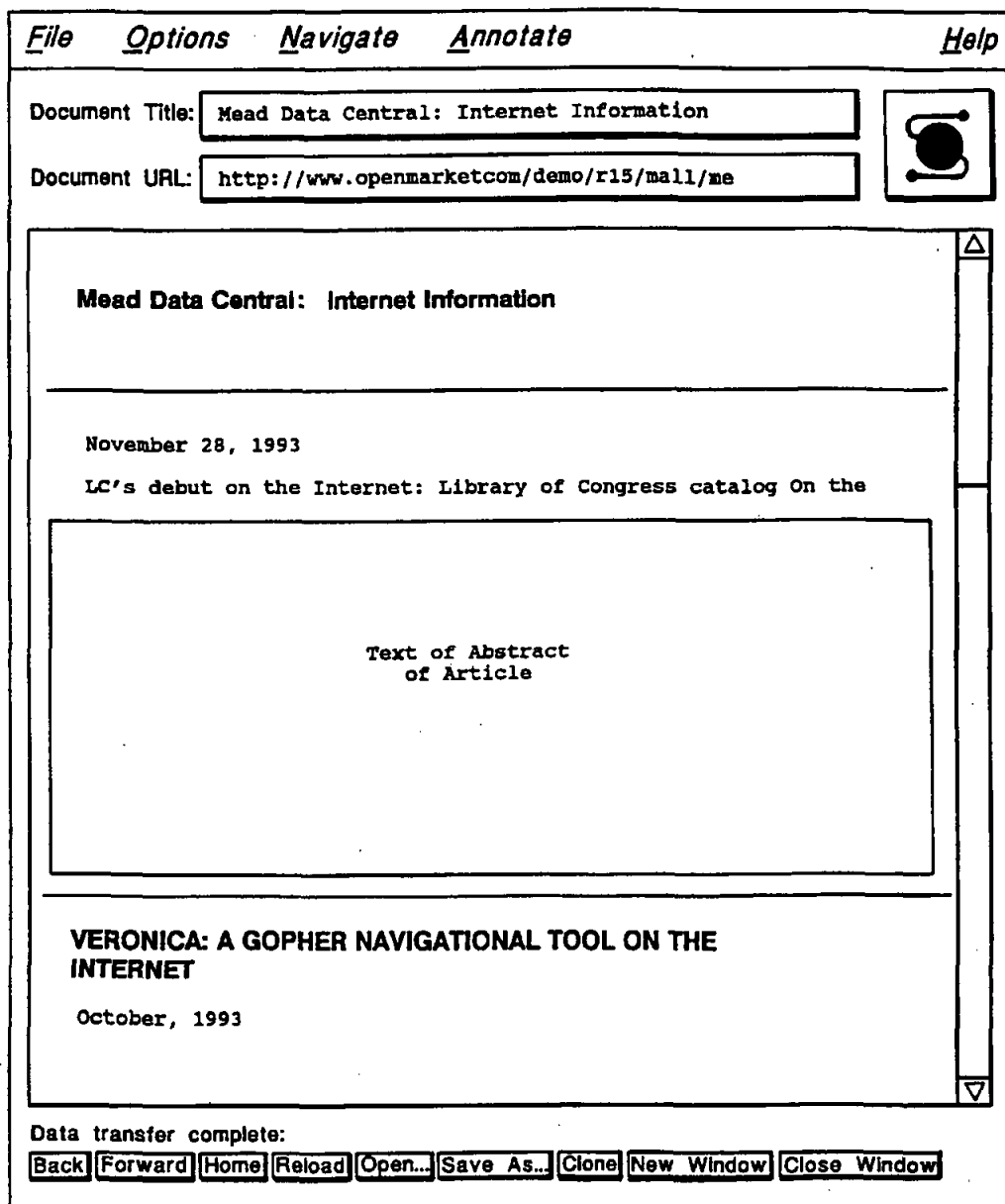


FIG. 5

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<u>F</u> ile	<u>O</u> ptions	<u>N</u> avigate	<u>A</u> nnotate	<u>H</u> elp
Document Title: <input type="text" value="Open Market Payment"/>				
Document URL: <input type="text" value="http://payment.openmarket.com/ben/nph-payment"/>				
<div><div><h3>Open Market Payment</h3><p>You have selected an item that requires payment</p><p>Merchant:Test Merchant Description:Mead Data Central Article Amount:2.85(US currency)</p><p>If you have an Open Market account click on "continue" below and you will be prompted for your account name and password. If you do not have an account, you can establish one on-line and return to this page to continue your purchase.</p><div><input type="button" value="Open"/> an account on-line</div><div><input type="button" value="Continue"/> with payment transaction.</div><p>NOTE:For demonstrations use the account name <code>testuser@openmarket.com</code> with the password <code>testuser</code>.</p><hr/><p>Open Market, Inc.</p></div><div><div>△</div><div></div><div>▽</div></div></div>				
Data transfer complete: <input type="button" value="Back"/> <input type="button" value="Forward"/> <input type="button" value="Home"/> <input type="button" value="Reload"/> <input type="button" value="Open..."/> <input type="button" value="Save As..."/> <input type="button" value="Clone"/> <input type="button" value="New Window"/> <input type="button" value="Close Window"/>				

FIG. 6

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<u>File</u>	<u>Options</u>	<u>Navigate</u>	<u>Annotate</u>	<u>Help</u>
Document Title: Establish OpenMarket Account				
Document URL: http://payment.openmarket.com/service/destabli.				
<div>Card Number: <input type="text"/></div> <div>Expiration Date: <input type="text"/> (format MM/YY)</div> <div>Check the appropriate boxes: <input type="checkbox"/> I am the owner of the above credit card. <input type="checkbox"/> The above address is also the billing address for this credit card.</div> <div>Your OpenMarket account statement is available on-line. At your option you may a copy of your statement automatically sent to your e-mail address at weekly or monthly intervals. Please choose a statement option. <input type="checkbox"/> Weekly statements <input type="checkbox"/> Monthly statements <input type="checkbox"/> No e-mail statements</div> <div>Account name and password Please choose an account name and password for your OpenMarket account. We suggest using an account name that is unique and easy to remember such as your e-mail address. Your password should be 8 characters or longer. Account Name <input type="text"/> Password <input type="text"/></div>				
Data transfer complete: <div>Back Forward Home Reload Open... Save As... Clone New Window Close Window</div>				

FIG. 7

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Document is protected.
Enter username for Open Market Account at payment.openmarket.com:

FIG. 8

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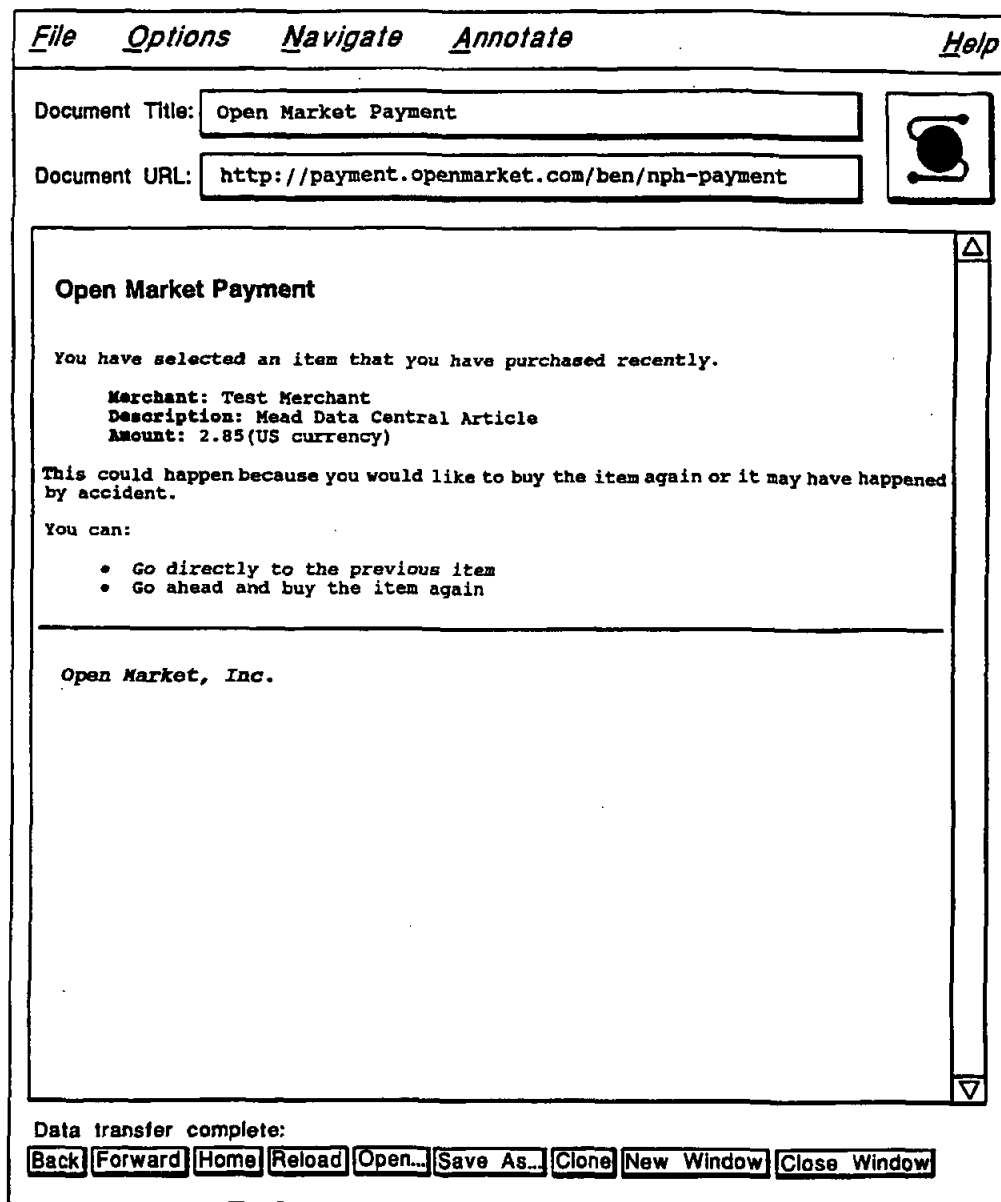


FIG. 9

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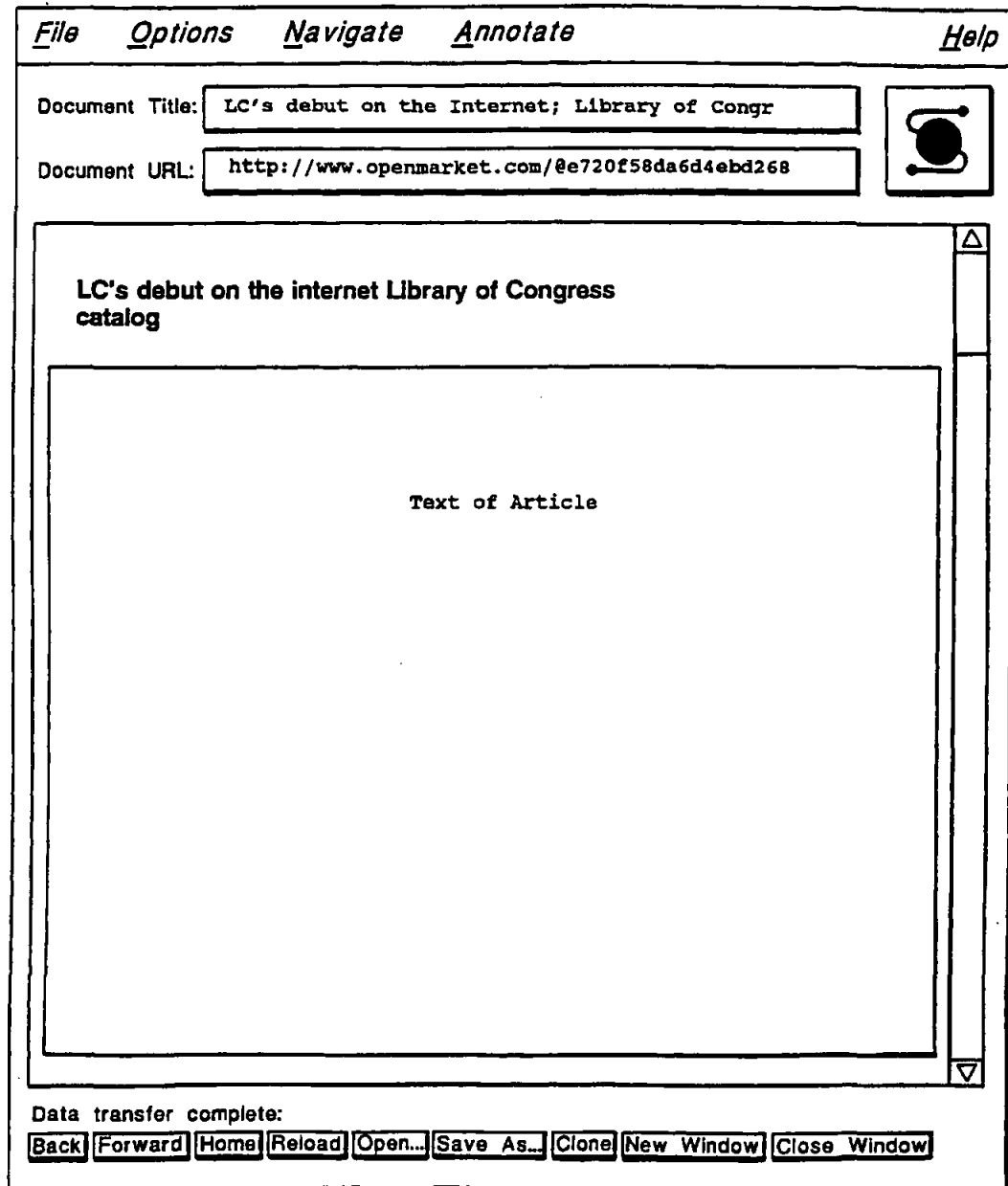


FIG. 10

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File Options Navigate Annotate	Help																																																
<p>Document Title: <input style="width: 80%;" type="text" value="Smart Statement for Test User"/></p> <p>Document URL: <input style="width: 80%;" type="text" value="http://payment.openmarket.com/in/nph-stateme"/></p>																																																	
<div style="border: 1px solid black; padding: 5px;"> <p>Information about the item.</p> <p>Transactions in October 1994</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Mon Oct 3</td> <td style="width: 15%;">Test Merchant</td> <td style="width: 40%;">Dilbert subscription 20 seconds</td> <td style="width: 30%;">amount \$0.10</td> </tr> <tr> <td>Tue Oct 4</td> <td>Test Merchant</td> <td>Mead Data Central Article</td> <td>amount \$2.95</td> </tr> <tr> <td>Tue Oct 4</td> <td>Test Merchant</td> <td>Mead Data Central Article</td> <td>amount \$2.95</td> </tr> <tr> <td>Tue Oct 4</td> <td>Test Merchant</td> <td>Mead Data Central Article</td> <td>amount \$2.95</td> </tr> <tr> <td>Tue Oct 4</td> <td>Test Merchant</td> <td>N.Y. Times Article</td> <td>amount \$0.50</td> </tr> <tr> <td>Tue Oct 4</td> <td>Test Merchant</td> <td>Mead Data Central Article</td> <td>amount \$2.95</td> </tr> <tr> <td>Wed Oct 5</td> <td>Test Merchant</td> <td>Mead Data Central Article</td> <td>amount \$2.95</td> </tr> <tr> <td>Wed Oct 5</td> <td>Test Merchant</td> <td>Mead Data Central Article</td> <td>amount \$2.95</td> </tr> <tr> <td>Wed Oct 5</td> <td>Test Merchant</td> <td>Mead Data Central Article</td> <td>amount \$2.95</td> </tr> <tr> <td>Wed Oct 5</td> <td>Test Merchant</td> <td>Mead Data Central Article</td> <td>amount \$2.95</td> </tr> <tr> <td>Wed Oct 5</td> <td>Test Merchant</td> <td>Mead Data Central Article</td> <td>amount \$2.95</td> </tr> <tr> <td>Wed Oct 5</td> <td>Test Merchant</td> <td>Mead Data Central Article</td> <td>amount \$2.95</td> </tr> </table> <p>Your total is 33.05.</p> <p>Previous Statements</p> <ul style="list-style-type: none"> • September 1994 • August 1994 <p>Return to your Newest Statement</p> <p>Feedback</p> <p>You can send us comments and suggestions here.</p> </div>		Mon Oct 3	Test Merchant	Dilbert subscription 20 seconds	amount \$0.10	Tue Oct 4	Test Merchant	Mead Data Central Article	amount \$2.95	Tue Oct 4	Test Merchant	Mead Data Central Article	amount \$2.95	Tue Oct 4	Test Merchant	Mead Data Central Article	amount \$2.95	Tue Oct 4	Test Merchant	N.Y. Times Article	amount \$0.50	Tue Oct 4	Test Merchant	Mead Data Central Article	amount \$2.95	Wed Oct 5	Test Merchant	Mead Data Central Article	amount \$2.95	Wed Oct 5	Test Merchant	Mead Data Central Article	amount \$2.95	Wed Oct 5	Test Merchant	Mead Data Central Article	amount \$2.95	Wed Oct 5	Test Merchant	Mead Data Central Article	amount \$2.95	Wed Oct 5	Test Merchant	Mead Data Central Article	amount \$2.95	Wed Oct 5	Test Merchant	Mead Data Central Article	amount \$2.95
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FIG. 11

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<u>File</u>	<u>Options</u>	<u>Navigate</u>	<u>Annotate</u>	<u>Help</u>
-------------	----------------	-----------------	-----------------	-------------

Document Title:

Document URL:

Smart Statement Detail

This is the detailed information about a particular transaction from your Smart Statement

Transaction Information

url: http://www.openmarket.com/demos/aug15/mall/mead-fingerprint/mkarticle.cgo
transaction_log_id: 50254.0
currency: US
transaction_date: 781377633
initiator: 1.0
expiration: 2592000
description: Mead Data Central Article
amount: 2.95
beneficiary: 3.0
ip_address: 199.170.183.13
transaction_type: p
domain: mead.internet-1

Merchant Information

telephone: 617-621-9501
address_1: Open Market, Inc.
address_2: 215 First Street
fax: 617-621-1703
address_3: Cambridge, MA
email: testmerchant@openmarket.com
principal_name: Test Merchant

Data transfer complete:

FIG. 12

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<u>F</u> ile	<u>O</u> ptions	<u>N</u> avigate	<u>A</u> nnotate	<u>H</u> elp
Document Title: <input type="text" value="Smart Statement Detail"/>				
Document URL: <input type="text" value="http://payment.openmarket.com/@c632f154cc8021"/>				
<pre> url: http://www.openmarket.com/demos/aug15/mall/mead-fingerprint/mkarticle.cgo transaction_log_id: 50254.0 currency: US transaction_date: 781377633 initiator: 1.0 expiration: 2592000 description: Mead Data Central Article amount: 2.95 beneficiary: 3.0 ip_address: 199.170.183.13 transaction_type.p domain: mead.internet-1 </pre>				
<p>Merchant Information</p> <pre> telephone: 617-621-9501 address_1: Open Market, Inc. address_2: 215 First Street fax: 617-621-1703 address_3: Cambridge, MA email: testmerchant@openmarket.com principal_name: Test Merchant home_url: country: US postal_code: 02142 </pre>				
<p>Feedback</p> <p>You can send us comments and suggestions here.</p>				
<p>Data transfer complete:</p> <p> <input type="button" value="Back"/> <input type="button" value="Forward"/> <input type="button" value="Home"/> <input type="button" value="Reload"/> <input type="button" value="Open..."/> <input type="button" value="Save As..."/> <input type="button" value="Clone"/> <input type="button" value="New Window"/> <input type="button" value="Close Window"/> </p>				

FIG. 13

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File Options Navigate Annotate Help

Document Title:

Document URL:

Or if you prefer, you can send your comments via electronic mail to feedback@openmarket.com or via FAX to +1.617.621.1703. If you would like a reply please include your e-mail address.

Your Open Market account name (optional):

Your E-mail address (optional):

Subject:

Your comments:

Data transfer complete:

FIG. 14

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NETWORK SALES SYSTEM

CROSS REFERENCE TO RELATED
APPLICATION

This is a continuation of U.S. patent application Ser. No. 08/328,133, filed Oct. 24, 1994, now U.S. Pat. No. 5,715,314.

REFERENCE TO MICROFICHE APPENDICES

Microfiche Appendices A-G are being submitted with the present application, being 4 sheets with 220 total pages.

BACKGROUND OF THE INVENTION

This invention relates to user-interactive network sales systems for implementing an open marketplace for goods or services over computer networks such as the Internet.

U.S. patent application Ser. No. 08/168,519, filed Dec. 16, 1993 by David K. Gifford and entitled "Digital Active Advertising," now abandoned, the entire disclosure of which is hereby incorporated herein in its entirety by reference, describes a network sales system that includes a plurality of buyer computers, a plurality of merchant computers, and a payment computer. A user at a buyer computer asks to have advertisements displayed, and the buyer computer requests advertisements from a merchant computer, which sends the advertisements to the buyer computer. The user then requests purchase of an advertised product, and the buyer computer sends a purchase message to the merchant computer. The merchant computer constructs a payment order that it sends to the payment computer, which authorizes the purchase and sends an authorization message to the merchant computer. When the merchant computer receives the authorization message it sends the product to the buyer computer.

The above-mentioned patent application also describes an alternative implementation of the network sales system in which, when the user requests purchase of an advertised product, the buyer computer sends a payment order directly to the payment computer, which sends an authorization message back to the buyer computer that includes an unforgeable certificate that the payment order is valid. The buyer computer then constructs a purchase message that includes the unforgeable certificate and sends it to the merchant computer. When the merchant computer receives the purchase request it sends the product to the buyer computer, based upon the pre-authorized payment order.

SUMMARY OF THE INVENTION

In one aspect, the invention provides a network-based sales system that includes at least one buyer computer for operation by a user desiring to buy a product, at least one merchant computer, and at least one payment computer. The buyer computer, the merchant computer, and the payment computer are interconnected by a computer network. The buyer computer is programmed to receive a user request for purchasing a product, and to cause a payment message to be sent to the payment computer that comprises a product identifier identifying the product. The payment computer is programmed to receive the payment message, to cause an access message to be created that comprises the product identifier and an access message authenticator based on a cryptographic key, and to cause the access message to be sent to the merchant computer. The merchant computer is programmed to receive the access message, to verify the access message authenticator to ensure that the access

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message authenticator was created using the cryptographic key, and to cause the product to be sent to the user desiring to buy the product.

The invention provides a simple design architecture for the network sales system that allows the merchant computer to respond to payment orders from the buyer computer without the merchant computer having to communicate directly with the payment computer to ensure that the user is authorized to purchase the product and without the merchant computer having to store information in a database regarding which buyers are authorized to purchase which products. Rather, when the merchant computer receives an access message from the buyer computer identifying a product to be purchased, the merchant computer need only check the access message to ensure that it was created by the payment computer (thereby establishing for the merchant computer that the buyer is authorized to purchase the product), and then the merchant computer can cause the product to be sent to the buyer computer who has been authorized to purchase the product.

In another aspect, the invention features a network-based sales system that includes at least one buyer computer for operation by a user desiring to buy products, at least one shopping cart computer, and a shopping cart database connected to the shopping cart computer. The buyer computer and the shopping cart computer are interconnected by a computer network. The buyer computer is programmed to receive a plurality of requests from a user to add a plurality of respective products to a shopping cart in the shopping cart database, and, in response to the requests to add the products, to send a plurality of respective shopping cart messages to the shopping cart computer each of which includes a product identifier identifying one of the plurality of products. The shopping cart computer is programmed to receive the plurality of shopping cart messages, to modify the shopping cart in the shopping cart database to reflect the plurality of requests to add the plurality of products to the shopping cart, and to cause a payment message associated with the shopping cart to be created. The buyer computer is programmed to receive a request from the user to purchase the plurality of products added to the shopping cart and to cause the payment message to be activated to initiate a payment transaction for the plurality of products added to the shopping cart.

In another aspect, the invention features a network-based link message system that includes at least one client computer for operation by a client user and at least one server computer for operation by a server user. The client computer and the server computer are interconnected by a computer network. The client computer is programmed to send an initial link message to the server computer. The server computer is programmed to receive the initial link message from the client computer and to create, based on information contained in the initial link message, a session link message that encodes a state of interaction between the client computer and the server computer. The session link message includes a session link authenticator, computed by a cryptographic function of the session link contents, for authenticating the session link message. The server computer is programmed to cause the session link message to be sent to the client computer. The client computer is programmed to cause the session link message to be sent to a computer in the network that is programmed to authenticate the session link message by examining the session link authenticator and that is programmed to respond to the session link message based on the state of the interaction between the client computer and the server computer.

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In another aspect, the invention features a network-based sales system that includes a merchant database having a plurality of digital advertisements and a plurality of respective product fulfillment items, at least one creation computer for creating the merchant database, and at least one merchant computer for causing the digital advertisements to be transmitted to a user and for causing advertised products to be transmitted to the user. The creation computer and the merchant computer are interconnected by a computer network. The creation computer is programmed to create the merchant database, and to transmit the digital advertisements and the product fulfillment items to the merchant computer. The merchant computer is programmed to receive the digital advertisements and product fulfillment items, to receive a request for a digital advertisement from a user, to cause the digital advertisement to be sent to the user, to receive from the user an access message identifying an advertised product, and to cause the product to be sent to the user in accordance with a product fulfillment item corresponding to the product.

In another aspect, the invention features a hypertext statement system that includes a client computer for operation by a client user and one or more server computers for operation by a server user. The client computer and the server computers are interconnected by a computer network. At least one of the server computers is programmed to record purchase transaction records in a database. Each of the purchase transaction records includes a product description. The server computer is programmed to transmit a statement document that includes the purchase transaction records to the client computer. The client computer is programmed to display the product descriptions, to receive a request from the client user to display a product corresponding to a product description displayed by the client computer, and to cause a product hypertext link derived from a purchase transaction record to be activated. At least one of the server computers is programmed to respond to activation of the product hypertext link by causing the product to be sent to the client computer.

In another aspect, the invention features a network payment system that includes at least one buyer computer for operation by a user desiring to buy a product and at least one payment computer for processing payment messages from the buyer computer. The buyer computer and the payment computer are interconnected by a computer network. The buyer computer is programmed to cause a payment message to be sent to the payment computer. The payment message includes a product identifier identifying the product that the user desires to buy. The payment computer is programmed to receive the payment message, to cause an access message to be created to enable the user to access the product, and to record a purchase transaction record in the settlement database. The buyer computer is programmed to cause a request for purchase transaction records to be sent to the payment computer. The payment computer is programmed to receive the request for purchase transaction records and to cause a document derived from the purchase transaction records to be sent to the buyer computer.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a block diagram of a network sales system in accordance with the present invention.

FIG. 2 (2-A through 2-I) is a flowchart diagram illustrating the operation of a purchase transaction in the network sales system of FIG. 1.

FIG. 3 (3-A through 3-B) is a flowchart diagram illustrating the use of a shopping cart for the purchase of products in connection with the network sales system of FIG. 1.

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FIG. 4 (4-A through 4-C) is a flowchart diagram illustrating the operation of a smart statement in the network sales system of FIG. 1.

FIG. 5 is a screen snapshot of an advertising document that the merchant computer sends to the buyer computer in FIG. 2.

FIG. 6 is a screen snapshot of a confirmation document that the payment computer sends to the buyer computer in FIG. 2.

FIG. 7 is a screen snapshot of a new account document that the payment computer sends to the buyer computer in FIG. 2.

FIG. 8 is a screen snapshot of an account name prompt that the buyer computer creates in FIG. 2.

FIG. 9 is a screen snapshot of a document that the payment computer sends to the buyer computer in FIG. 2 and that provides an option either to repurchase or to use a previously purchased access.

FIG. 10 is a screen snapshot of a fulfillment document that the merchant computer sends to the buyer computer in FIG. 2.

FIG. 11 is a screen snapshot of a smart statement document that the payment computer sends to the buyer computer in FIG. 4.

FIGS. 12 and 13 are screen snapshots of a transaction detail document that the payment computer sends to the buyer computer in FIG. 4.

FIG. 14 is a screen snapshot of a customer service form that the payment computer sends to the buyer computer in FIG. 4.

DETAILED DESCRIPTION

With reference to FIG. 1, a network sales system in accordance with the present invention includes a buyer computer 12 operated by a user desiring to buy a product, a merchant computer 14, which may be operated by a merchant willing to sell products to the buyer or by a manager of the network sales system, a payment computer 16 typically operated by a manager of the network sales system, and a creation computer 20 typically operated by the merchant. The buyer, merchant, payment, and creation computers are all inter-connected by a computer network 10 such as the Internet.

Creation computer 20 is programmed to build a "store" of products for the merchant. A printout of a computer program for use in creating such a "store" in accordance with the present invention is provided as Appendix F.

The products advertised by merchant computer 14 may be, for example, newspaper or newsletter articles available for purchase by buyers. Creation computer 20 creates a digital advertisement database 18 that stores advertising documents (which may for example be in the form of summaries of newspaper or newsletter articles, accompanied by prices) and product fulfillment items (which may be the products themselves if the products can be transmitted over the network, or which may be hard goods identifiers if the products are hard goods, i.e., durable products as opposed to information products). Creation computer 20 transmits contents of the advertising document database 18 to merchant computer 14 to enable the merchant computer to cause advertisements and products to be sent to buyers. Merchant computer 14 maintains advertising documents locally in advertising document database 15. In an alternative embodiment, the creation computer does not have a local digital advertisement database, but instead updates a remote

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advertising document database on a merchant computer. These updates can be accomplished using HTML forms or other remote database technologies as is understood by practitioners of the art.

Payment computer 16 has access to a settlement database 22 in which payment computer 16 can record details of purchase transactions. The products may be organized into various "domains" of products, and payment computer 16 can access settlement database 22 to record and retrieve records of purchases of products falling within the various domains. Payment computer 16 also has access to a shopping cart database 21 in which a "shopping cart" of products that a user wishes to purchase can be maintained as the user shops prior to actual purchase of the contents of the shopping cart.

With reference to FIG. 2, a purchase transaction begins when a user at buyer computer 12 requests advertisements (step 24) and buyer computer 12 accordingly sends an advertising document URL (universal resource locator) to merchant computer 14 (step 26). The merchant computer fetches an advertising document from the advertising document database (step 28) and sends it to the buyer computer (step 30). An example of an advertising document is shown in FIG. 5. Details of URLs and how they are used are found in Appendix G.

The user browses through the advertising document and eventually requests a product (step 32). This results in the buyer computer sending payment URL A to the payment computer (step 34). Payment URL A includes a product identifier that represents the product the user wishes to buy, a domain identifier that represents a domain of products to which the desired product belongs, a payment amount that represents the price of the product, a merchant computer identifier that represents merchant computer 14, a merchant account identifier that represents the particular merchant account to be credited with the payment amount, a duration time that represents the length of time for which access to the product is to be granted to the user after completion of the purchase transaction, an expiration time that represents a deadline beyond which this particular payment URL cannot be used, a buyer network address, and a payment URL authenticator that is a digital signature based on a cryptographic key. The payment URL authenticator is a hash of other information in the payment URL, the hash being defined by a key shared by the merchant and the operator of the payment computer.

In an alternative embodiment, step 34 consists of the buyer computer sending a purchase product message to the merchant computer, and the merchant computer provides payment URL A to the buyer computer in response to the purchase product message. In this alternative embodiment, payment URL A contains the same contents as above. The buyer computer then sends the payment URL A it has received from the merchant computer to the payment computer.

When the payment computer receives the payment URL it verifies whether the payment URL authenticator was created from the contents of the payment URL using the cryptographic key (step 36). If not, the payment computer sends a document to the buyer computer indicating that access to the network sales system is denied (step 38). Otherwise, the payment computer determines whether the expiration time has past (step 40). If it has, the payment computer sends a document to the buyer computer indicating that the time has expired (step 41). Otherwise, the payment computer checks the buyer computer network

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address to see if it matches the one specified in the payment URL (step 42). If it does not match, the payment computer sends a document to the buyer computer indicating that access to the network payment system is denied (step 43).

Otherwise, the payment computer sends a payment confirmation document to the buyer computer, the payment confirmation document including an "open" link and a "continue" link (step 44).

An example of a confirmation document is shown in FIG. 6. The confirmation document asks the user to click on a "continue" button if the user already has an account with the payment computer, or to click on an "open" button if the user does not already have an account and wishes to open one.

If the user clicks on the "open" button (step 46), the buyer computer sends payment URL C to the payment computer (step 48), payment URL C being similar to payment URL A but also indicating that the user does not yet have an account. The payment computer creates a new account document (step 50) and sends it to the buyer computer (step 52). An example of a new account document is shown in FIG. 7. When the user receives the new account document he enters the new account name, an account password, a credit card number, the credit card expiration date, and security information such as the maiden name of the user's mother (step 54), and presses a "submit" button (not shown in FIG. 7). The buyer computer sends the new account information to the payment computer (step 56), which enters the new account in the settlement database (step 58).

If the user clicks on the "continue" button (step 60), the buyer computer sends payment URL B to the payment computer (step 62), payment URL B being similar to payment URL A but also indicating that the user already has an account. The payment computer then instructs the buyer computer to provide the account name and password (steps 64 and 66), and the buyer computer prompts the user for this information by creating an account name prompt (example shown in FIG. 8) and a similar password prompt. The user enters the information (step 68) and the buyer computer sends the account name and password to the payment computer (step 70).

The payment computer verifies whether the user name and password are correct (step 72). If they are not correct, the payment computer sends a document to the buyer computer indicating that access to the network sales system is denied (step 74). Otherwise, the payment computer determines whether additional security is warranted, based on, e.g., whether the payment amount exceeds a threshold (step 73). If additional security is warranted, the payment computer creates a challenge form document and sends it to the buyer computer (step 75). The user enters the security information (step 77), the buyer computer sends the security information to the payment computer (step 79), and the payment computer determines whether the security information is correct (step 81). If it is not correct, the payment computer sends a document to the buyer computer indicating that access to the network sales system is denied (step 83).

If the security information is correct, or if additional security was not warranted, the payment computer checks the settlement database to determine whether the user has unexpired access to the domain identifier contained in the payment URL (step 82). If so, the payment computer sends to the buyer computer a document providing an option either to repurchase or to use the previously purchased access (step 84). An example of such a document is shown in FIG. 9. The

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user can respond to the recent purchase query document by choosing to access the previously purchased document (step 85) or to go ahead and buy the currently selected product (step 86).

If the user chooses to access the previously purchased document, the buyer computer skips to step 92 (see below). If the user chooses to buy the currently selected product, the payment computer calculates an actual payment amount that may differ from the payment amount contained in the payment URL (step 87). For example, the purchase of a product in a certain domain may entitle the user to access other products in the domain for free or for a reduced price for a given period of time.

The payment computer then verifies whether the user account has sufficient funds or credit (step 76). If not, the payment computer sends a document to the buyer computer indicating that the user account has insufficient funds (step 78). Otherwise, the payment computer creates an access URL (step 80) that includes a merchant computer identifier, a domain identifier, a product identifier, an indication of the end of the duration time for which access to the product is to be granted, the buyer network address, and an access URL authenticator that is a digital signature based on a cryptographic key. The access URL authenticator is a hash of other information in the access URL, the hash being defined by a key shared by the merchant and the operator of the payment computer. The payment computer then records the product identifier, the domain, the user account, the merchant account, the end of duration time, and the actual payment amount in the settlement database (step 88).

The payment computer then sends a redirect to access URL to the buyer computer (step 90), which sends the access URL to the merchant computer (step 92). The merchant computer verifies whether the access URL authenticator was created from the contents of the access URL using the cryptographic key (step 94). If not, the merchant computer sends a document to the buyer computer indicating that access to the product is denied (step 96).

Otherwise, the merchant computer verifies whether the duration time for access to the product has expired (step 98). This is done because the buyer computer can request access to a purchased product repeatedly. If the duration time has expired, the merchant computer sends a document to the buyer computer indicating that the time has expired (step 100). Otherwise the merchant computer verifies that the buyer computer network address is the same as the buyer network address in the access URL (step 101), and if so, sends a fulfillment document to the buyer computer (step 102), which is displayed by the buyer computer (step 104). An example of a fulfillment document is shown in FIG. 10. Otherwise, the merchant computer sends a document to the buyer computer indicating that access is not allowed (step 103).

With reference now to FIG. 3, when the merchant computer sends the advertising document to the buyer computer, the user may request that a product be added to a shopping cart in the shopping cart database rather than request that the product be purchased immediately. The buyer computer sends a shopping cart URL to the payment computer (step 108), the shopping cart URL including a product identifier, a domain identifier, a payment amount, a merchant computer identifier, a merchant account identifier, a duration time, an expiration time, and a shopping cart URL authenticator that is a digital signature based on a cryptographic key. The shopping cart URL authenticator is a hash of other information in the shopping cart URL, the hash being defined by

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a key shared by the merchant and the operator of the payment computer.

The payment computer verifies whether the shopping cart URL authenticator was created from the contents of the shopping cart URL using a cryptographic key (step 110). If not, the payment computer sends a document to the buyer computer indicating that access to the network sales system is denied (step 112). Otherwise, before any modification to a user's shopping cart is allowed, user authentication is performed (step 113) in a manner analogous to steps 40-81. Once the user is authenticated, the payment computer creates or updates a payment URL for the shopping cart (step 114).

The user then either requests more advertisements (step 24 in FIG. 2) and possibly adds another product to the shopping cart, requests display of the shopping cart (step 116), or requests purchase of the entire contents of the shopping cart (step 124). If the user requests display of the shopping cart (step 116), the buyer computer sends a fetch shopping cart request to the payment computer (step 118), and the payment computer and buyer computer (step 119) perform steps analogous to steps 64-81. The payment computer returns the contents of the shopping cart to the buyer computer (step 120), which displays the contents of the shopping cart (step 122). If the user requests that the entire contents of the shopping cart be purchased (step 124) the buyer computer causes the payment URL for the shopping cart to be activated (step 126) and the payment URL is processed in a manner analogous to the processing of payment URLs for individual products (beginning with step 36 in FIG. 2).

With reference now to FIG. 4, a user can request display of a "smart statement" that lists purchase transactions for a given month (step 128). When the buyer computer receives such a request, it sends a smart statement URL to the payment computer (step 130).

When the payment computer receives the smart statement URL, it verifies whether the smart statement URL authenticator was created from the contents of the smart statement URL using a cryptographic key (step 132). If not, the payment computer sends a document to the buyer computer indicating that access is denied (step 134). Otherwise, the payment computer checks to determine whether the buyer network address in the smart statement URL matches the buyer computer's actual network address (step 136). If not, the payment computer sends a document to the buyer computer indicating that access is denied (step 138). Otherwise (step 140), the payment computer and buyer computer perform a set of steps analogous to steps 64-81 in FIG. 2 (payment computer requests account name and password, user provides the requested information, and payment computer verifies the information).

In an alternative embodiment steps 132-138 are omitted.

After verification of account information is complete, the payment computer retrieves the requested settlement data from the settlement database, creates a smart statement document for the buyer, and sends the smart statement document to the buyer computer (step 142). An example of a smart statement document is shown in FIG. 11. Each purchase transaction record in the smart statement document includes the data of the transaction, the name of the merchant, an identification of the product, and the payment amount for the product. The smart statement document also includes a transaction detail URL for each purchase transaction (these URLs, or hypertext links, are discussed below and are not shown in FIG. 11). The smart statement docu-

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ment also identifies previous statements that the user may wish to have displayed.

The buyer computer displays the retrieved document (step 144), and the user may request transaction details for a particular transaction listed on the smart statement (step 146). If so, the buyer computer sends a transaction detail URL (or "payment detail URL") to the payment computer (step 148). The transaction detail URL includes a transaction identifier, a buyer network address, and a transaction detail URL authenticator. When the payment computer receives the transaction detail URL, it performs (step 150) a set of steps analogous to steps 132-140 (verification of URL authenticator, buyer network address, and account information). The payment computer then retrieves from the settlement database data corresponding to the payment transaction specified in the transaction detail URL, creates a transaction detail document, and sends it to the buyer computer (step 152).

An example of a transaction detail document is shown in FIGS. 12 and 13. The document displays a number of items of information about the transaction, including the transaction date, end of the duration time ("expiration"), a description of the product, the payment amount, the domain corresponding to the product, an identification of the merchant, and the merchant's address.

The smart statement document and the transaction detail document both include customer service URLs (hypertext links) that allow the user to request customer service (i.e., to send comments and suggestions to the payment computer). When the user requests customer service (step 154), the buyer computer sends the customer service URL to the payment computer (step 156), which creates a customer service form and sends it to the buyer computer (step 158). An example of a customer service form is shown in FIG. 14. The user types comments into the customer service form (step 160), and the buyer computer sends the user's comments to the payment computer (step 162). The payment computer then posts the user comments and sends a thank you document to the buyer computer (step 164).

A user may request display of a product included in the smart statement. When the user requests that the product be displayed (step 166), the buyer computer sends the access URL contained in the smart statement document to the merchant computer (step 168), and the buyer computer and merchant computer perform a set of steps analogous to steps 94-104 in FIG. 2 (authentication of access URL, verification whether duration time has expired, verification of buyer network address, and transmission of fulfillment document to buyer computer).

Whenever the present application states that one computer sends a URL to another computer, it should be understood that in preferred embodiments the URL is sent in a standard HTTP request message, unless a URL message is specified as a redirection in the present application. The request message includes components of the URL as described by the standard HTTP protocol definition. These URL components in the request message allow the server to provide a response appropriate to the URL. The term "URL" as used in the present application is an example of a "link," which is a pointer to another document or form (including multimedia documents, hypertext documents including other links, or audio/video documents).

When the present application states that one computer sends a document to another computer, it should be understood that in preferred embodiments the document is a success HTTP response message with the document in the

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body of the message. When the present application states that a server sends an account name and password request message to the client, it should be understood that in preferred embodiments the account name and password request message is an unauthorized HTTP response. A client computer sends account name and password information to a server as part of a request message with an authorization field.

The software architecture underlying the particular preferred embodiment is based upon the hypertext conventions of the World Wide Web. Appendix A describes the Hypertext Markup Language (HTML) document format used to represent digital advertisements, Appendix B describes the HTML forms fill out support in Mosaic 2.0, Appendix C is a description of the Hypertext Transfer Protocol (HTTP) between buyer and merchant computers, Appendix D describes how documents are named with Uniform Resource Locators (URLs) in the network of computers, and Appendix E describes the authentication of URLs using digital signatures.

A printout of a computer program for use in creating and operating such a "store" in accordance with the present invention is provided as Appendix F. A printout of a computer program for use in operating other aspects of the network sales system in accordance with the present invention is provided in Appendix G.

There has been described a new and useful network-based sales system. It is apparent that those skilled in the art may make numerous modifications and departures from the specific embodiments described herein without departing from the spirit and scope of the claimed invention.

What is claimed is:

1. A network-based sales system, comprising:

a merchant database comprising a plurality of digital advertisements and a plurality of respective product fulfillment items;

at least one creation computer for creating said merchant database; and

at least one merchant computer for causing said digital advertisements to be transmitted to a user and for causing advertised products to be transmitted to said user;

said creation computers, said merchant computer, and a payment computer being interconnected by a public packet switched computer network;

said creation computer being programmed to create said merchant database, and to transmit said digital advertisements and said product fulfillment items over said network to said merchant computer;

said merchant computer being programmed to receive said digital advertisements and product fulfillment items over said network, to receive over said network a request for a digital advertisement from a user, to cause said digital advertisement to be sent to said user over said network, to receive over said network from said user a product request message identifying an advertised product, to receive an access message over said network created by said payment computer, and to cause said product to be sent to said user in accordance with a product fulfillment item corresponding to said product and based upon receipt by the merchant computer of the access message.

2. A network-based sales system in accordance with claim 1, wherein each of said digital advertisements comprises an abstract of a product and a price.

3. A network-based sales system in accordance with claim 2, wherein:

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at least one of said product fulfillment items comprises a product itself; and

said creation computer is programmed to transmit said product to said merchant computer with said digital advertisements.

4. A network-based sales system in accordance with claim 2, wherein:

at least one of said product fulfillment items comprises a hard good identifier; and

said creation computer is programmed to transmit said hard good identifier to said merchant computer with said digital advertisements.

5. A method of operating a merchant computer in a network-based sales system comprising a merchant database that comprises a plurality of digital advertisements and a plurality of respective product fulfillment items, at least one creation computer for creating said merchant database, and at least one merchant computer for causing said digital advertisements to be transmitted to a user and for causing advertised products to be transmitted to said user, and at least one payment computer, said creation computer, said merchant computer, and said payment computer being interconnected by a public packet switched computer network, said method comprising the steps of:

receiving, at said merchant computer, said digital advertisements and said product fulfillment items, said digital advertisements and said product fulfillment items having been transmitted over said network to said merchant computer by said creation computer, said merchant database comprising said digital advertisements and said product fulfillment items having been created by said creation computer;

receiving over said network a request for a digital advertisement from a user;

causing said digital advertisement to be sent to said user over said network;

receiving over said network from said user a product request message identifying an advertised product;

receiving over said network an access message created by said payment computer; and

causing said product to be sent to said user in accordance with a product fulfillment item corresponding to said product and based upon receipt by the merchant computer of the access message.

6. A hypertext statement system, comprising:

a client computer for operation by a client user; and a plurality of server computers for operation by a server user;

said client computer and said server computers being interconnected by a public packet switched computer network;

at least one of said server computers being programmed to record information pertaining to purchase transaction records in a database, each of said purchase transaction records comprising a product description, and to cause a statement document comprising said purchase transaction records to be transmitted to said client computer over said network;

said client computer being programmed to display said product descriptions, to receive a request from said client user to display a product corresponding to a product description displayed by said client computer, and to cause a product hypertext link derived from a purchase transaction record to be activated;

at least one of said server computers, other than a server computer that transmitted said statement document to

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said client computer, being programmed to respond to activation of said product hypertext link by causing said product to be sent to said client computer over said network.

7. A hypertext statement system in accordance with claim 6, wherein:

said client computer is programmed to receive a request from said client user to display transaction details corresponding to a product description displayed by said client computer and to cause a transaction detail hypertext link corresponding to said product description to be activated; and

at least one of said server computers is programmed to respond to activation of said transaction detail hypertext link by transmitting said transaction details to said client computer as a transaction detail document.

8. A hypertext statement system in accordance with claim 7, wherein:

said transaction detail document further comprises a customer service form hypertext link;

said client computer is programmed to receive a request from said client user to display a customer service form and to cause said customer service form hypertext link to be activated; and

at least one of said server computers is programmed to respond to activation of said customer service form hypertext link by transmitting said customer service form to said client computer.

9. A hypertext statement system in accordance with claim 6, wherein:

said statement document further comprises a customer service form hypertext link;

said client computer is programmed to receive a request from said client user to display a customer service form and to cause said customer service form hypertext link to be activated; and

at least one of said server computers is programmed to respond to activation of said customer service form hypertext link by transmitting said customer service form to said client computer.

10. A method of operating a server computer in a hypertext statement system comprising a client computer for operation by a client user, and a plurality of server computers for operation by a server user, said client computer and said server computers being interconnected by a public packet switched computer network, said method comprising the steps of:

recording, at one of said server computers, information pertaining to purchase transaction records in a database, each of said purchase transaction records comprising a product description; and

causing a statement document comprising said purchase transaction records to be transmitted to said client computer over said network;

said client computer being programmed to display said product descriptions, to receive a request from said client user to display a product corresponding to a product description displayed by said client computer, and to cause a product hypertext link derived from a purchase transaction record to be activated;

at least one of said server computers, other than a server computer that transmitted said statement document to said client computer, being programmed to respond to activation of said product hypertext link by causing said product to be sent to said client computer over said network.

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11. A network payment system, comprising:

at least one buyer computer for operation by a user desiring to buy a product; and

at least one payment computer for processing payment messages from said buyer computer;

said buyer computer, said payment computer, and a merchant computer being interconnected by a public packet switched computer network;

said buyer computer being programmed to cause a payment message to be sent to said payment computer over said network;

said payment computer being programmed to receive said payment message, to cause an access message to be created for transmission over said network to said merchant computer to enable said user to access said product upon verification by said merchant computer that said access message was created by said payment computer, and to record information pertaining to a purchase transaction record in said settlement database; said buyer computer being programmed to cause a request for a purchase transaction record to be sent to said payment computer over said network; and said payment computer being programmed to receive said request for said purchase transaction record and to cause a document derived from said purchase transaction record to be sent to said buyer computer over said network.

12. The network payment system of claim 11 wherein the payment message comprises a product identifier identifying the product that the user desires to buy.

13. A method of operating a payment computer in a network payment system comprising at least one buyer computer for operation by a user desiring to buy a product, and at least one payment computer for processing payment messages from said buyer computer, and at least one merchant computer, said buyer computer, said payment computer, and said merchant computer being interconnected by a public packet switched computer network, said method comprising the steps of:

receiving, at said payment computer, a payment message that said buyer computer has caused to be sent to said payment computer over said network;

causing an access message to be created for transmission to a merchant computer over said network to enable said user to access said product upon verification by said merchant computer that said access message was created by said payment computer;

recording information pertaining to a purchase transaction record in said settlement database;

receiving over said network a request for a purchase transaction record that said buyer computer has caused to be sent to said payment computer; and

causing a document derived from said purchase transaction record to be sent to said buyer computer over said network.

14. The method of claim 13 wherein the payment message comprises a product identifier identifying the product that the user desires to buy.

15. A hypertext statement system, comprising:

a client computer for operation by a client user; and one or more server computers for operation by a server user;

the client computer and the server computers being interconnected by a public packet switched computer network;

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at least one of the server computers being programmed to record information pertaining to purchase transaction records in a database, and to transmit a statement document comprising the purchase transaction records to the client computer over the network;

the client computer being programmed to display the statement document to receive a request from the client user to display transaction details corresponding to a portion of the statement document displayed by the client computer, and to cause a transaction detail hypertext link corresponding to the portion of the statement document to be activated;

at least one of the server computers being programmed to respond to activation of the transaction detail hypertext link by transmitting the transaction details to the client computer over the network as a transaction detail document.

16. A method of operating a server computer in a hypertext statement system comprising a client computer for operation by a client user, and one or more server computers for operation by a server user, the client computer and the server computers being interconnected by a public packet switched computer network, the method comprising the steps of:

recording, at one of the server computers, information pertaining to purchase transaction records in a database; and

transmitting a statement document comprising the purchase transaction records to the client computer over the network;

the client computer being programmed to display the statement document, to receive a request from the client user to display transaction details corresponding to a portion of the statement document displayed by the client computer, and to cause a transaction detail hypertext link corresponding to the portion of the statement document to be activated;

at least one of the server computers being programmed to respond to activation of the transaction detail hypertext link by transmitting the transaction details to the client computer over the network as a transaction detail document.

17. A network-based sales system, comprising:

at least one buyer computer for operation by a user desiring to buy products;

at least one shopping cart computer; and

a shopping cart database connected to the shopping cart computer;

the buyer computer and the shopping cart computer being interconnected by a public packet switched computer network;

the buyer computer being programmed to receive a plurality of requests from a user to add a plurality of respective products to a shopping cart in the shopping cart database, and, in response to the requests to add the products, to send a plurality of respective shopping cart messages over the network to the shopping cart computer each of which comprises a product identifier identifying one of the plurality of products and at least one of which comprises a universal resource locator;

the shopping cart computer being programmed to receive the plurality of shopping cart messages, to modify the shopping cart in the shopping cart database to reflect the plurality of requests to add the plurality of products to the shopping cart, and to cause a payment message

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associated with the shopping cart to be created, the payment message comprising a universal resource locator; and

the buyer computer being programmed to receive a request from the user to purchase the plurality of products added to the shopping cart and to cause the payment message to be activated to initiate a payment transaction for the plurality of products added to the shopping cart;

the shopping cart being a stored representation of a collection of products, the shopping cart database being a database of stored representations of collections of products, and the shopping cart computer being a computer that modifies the stored representations of collections of products in the database.

18. A method of operating a shopping cart computer in a public packet switched computer network comprising at least one buyer computer for operation by a user desiring to buy products, at least one shopping cart computer, and a shopping cart database connected to the shopping cart computer, the method comprising the steps of:

receiving, at the shopping cart computer, a plurality of shopping cart messages sent over the network to the shopping cart computer by the buyer computer in response to receipt of a plurality of requests from a user to add a plurality of respective products to a shopping cart in the shopping cart database, each of the shopping cart messages comprising a product identifier identifying one of the plurality of products and at least one of which comprises a universal resource locator;

modifying the shopping cart in the shopping cart database to reflect the plurality of requests to add the plurality of products to the shopping cart; and

causing a payment message associated with the shopping cart to be created, the payment message comprising a universal resource locator;

the buyer computer being programmed to receive a request from the user to purchase the plurality of products added to the shopping cart and to cause the payment message to be activated to initiate a payment transaction for the plurality of products added to the shopping cart;

the shopping cart being a stored representation of a collection of products, the shopping cart database being a database of stored representations of collections of products, and the shopping cart computer being a computer that modifies the stored representations of collections of products in the database.

19. A network-based sales system, comprising:

at least one buyer computer for operation by a user desiring to buy a product;

at least one merchant computer; and

at least one payment computer;

the buyer computer, the merchant computer, and the payment computer being interconnected by a computer network;

the buyer computer being programmed to receive a user request for purchasing a product, and to cause a payment message to be sent to the payment computer that comprises a product identifier identifying the product;

the payment computer being programmed to receive the payment message, to cause an access message to be created that comprises a product identifier identifying the product and an access message authenticator based on a cryptographic key, and to cause the access message to be sent to the merchant computer; and

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the merchant computer being programmed to receive the access message, to cause the access message authenticator to be verified to ensure that the access message authenticator was created using the cryptographic key, and to cause the product to be received by the user desiring to buy the product.

20. A network-based sales system in accordance with claim 19 wherein the buyer computer is programmed to cause the payment message to be sent to the payment computer by sending a purchase product message to the merchant computer, the merchant computer being programmed to receive the purchase product message, and in response thereto, to send the payment message to the payment computer.

21. A network-based sales system in accordance with claim 19 wherein the merchant computer is programmed itself to verify the access message authenticator.

22. A network-based sales system in accordance with claim 19 wherein the merchant computer is programmed to cause every access message authenticator received by the merchant computer to be verified.

23. A network-based sales system in accordance with claim 19, wherein the payment message comprises a payment amount.

24. A network-based sales system in accordance with claim 19, wherein the payment computer is programmed to record the product identifier and the payment amount.

25. A network-based sales system in accordance with claim 24, wherein the product identifier and the payment amount are recorded in a settlement database.

26. A network-based sales system in accordance with claim 19, wherein the payment message comprises a merchant computer identifier.

27. A network-based sales system in accordance with claim 19, wherein the payment message comprises a payment message authenticator based on a cryptographic key.

28. A network-based sales system in accordance with claim 27, wherein the payment computer is programmed to verify the payment message authenticator to ensure that the payment message authenticator was created using the cryptographic key.

29. A network-based sales system in accordance with claim 19 wherein the computer network is a public packet-switched communications network.

30. A method of operating a payment computer in a computer network comprising at least one buyer computer for operation by a user desiring to buy a product, at least one merchant computer, and at least one payment computer, the method comprising the steps of:

receiving, at the payment computer, a payment message that the buyer computer has caused to be sent to the payment computer in response to a user request for purchasing a product, the payment message comprising a product identifier identifying the product;

causing an access message to be created that comprises a product identifier identifying the product and an access message authenticator based on a cryptographic key; and

causing the access message to be sent to the merchant computer, the merchant computer being programmed to receive the access message, to cause the access message authenticator to be verified to ensure that the access message authenticator was created using the cryptographic key, and to cause the product to be received by the user desiring to buy the product.

31. A network-based sales system, comprising:

at least one buyer computer for operation by a user desiring to buy a product;

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at least one merchant computer; and

at least one payment computer;

the buyer computer, the merchant computer, and the payment computer being interconnected by a public packet switched computer network;

the buyer computer being programmed to receive a request from a user for purchasing a product, and to cause a payment message to be sent over the network to the payment computer;

the payment computer being programmed to receive the payment message, and, if purchase of the product by the user has not been previously recorded in a settlement database, to cause the user to be charged for the product and to create a new record in the settlement database reflecting purchase of the product by the user, to cause an access message to be created, and to cause the access message to be sent over the network to the merchant computer; and

the merchant computer being programmed to receive the access message and to cause the user to receive the product.

32. The network-based sales system of claim 31 wherein: the payment computer is programmed to cause the access message to be created using a cryptographic key; and at least one of the computers is programmed to use the access message in a cryptographic process to ensure that the user has paid for the product.

33. A method of operating a payment computer in a public packet switched computer network comprising at least one buyer computer for operation by a user desiring to buy a product, at least one merchant computer, and at least one payment computer, the method comprising the steps of:

receiving, at the payment computer, a payment message that the buyer computer has caused to be sent over the network to the payment computer in response to a request from a user for purchasing a product, and, if purchase of the product by the user has not been previously recorded in a settlement database, causing the user to be charged for the product and creating a new record in the settlement database reflecting purchase of the product by the user;

causing an access message to be created; and

causing the access message to be sent over the network to the merchant computer, the merchant computer being programmed to receive the access message and to cause the user to receive the product.

34. The method of claim 33 wherein at least one of the computers is programmed to use the access message in a cryptographic process to ensure that the user has paid for the product.

35. A network-based sales system, comprising:

at least one buyer computer for operation by a user desiring to buy products;

at least one shopping cart computer; and

a shopping cart database connected to the shopping cart computer;

the buyer computer and the shopping cart computer being interconnected by a public packet switched computer network;

the buyer computer being programmed to receive a plurality of requests from a user to add a plurality of respective products to a shopping cart in the shopping cart database, and, in response to the requests to add the products, to send a plurality of respective shopping cart

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messages over the network to the shopping cart computer each of which comprises a product identifier identifying one of the plurality of products;

the shopping cart computer being programmed to receive the plurality of shopping cart messages, and to modify the shopping cart in the shopping cart database to reflect the plurality of requests to add the plurality of products to the shopping cart; and

the buyer computer being programmed to receive a request from the user to purchase the plurality of products added to the shopping cart and to cause a payment message to be activated to initiate a payment transaction for the plurality of products added to the shopping cart;

the shopping cart being a stored representation of a collection of products, the shopping cart database being a database of stored representations of collections of products, and the shopping cart computer being a computer that modifies the stored representations of collections of products in the database.

36. A method of operating a shopping cart computer in a public packet switched computer network comprising at least one buyer computer for operation by a user desiring to buy products, at least one shopping cart computer, and a shopping cart database connected to the shopping cart computer, the method comprising the steps of:

receiving, at the shopping cart computer, a plurality of shopping cart messages sent over the network to the shopping cart computer by the buyer computer in response to receipt of a plurality of requests from a user to add a plurality of respective products to a shopping cart in the shopping cart database, each of the shopping cart messages comprising a product identifier identifying one of the plurality of products; and

modifying the shopping cart in the shopping cart database to reflect the plurality of requests to add the plurality of products to the shopping cart;

the buyer computer being programmed to receive a request from the user to purchase the plurality of products added to the shopping cart and to cause a payment message to be activated to initiate a payment transaction for the plurality of products added to the shopping cart;

the shopping cart being a stored representation of a collection of products, the shopping cart database being a database of stored representations of collections of products, and the shopping cart computer being a computer that modifies the stored representations of collections of products in the database.

37. A network-based sales system, comprising:

a merchant database comprising a plurality of digital advertisements and a plurality of respective product fulfillment items;

at least one creation computer for creating the merchant database; and

at least one merchant computer for causing the digital advertisements to be transmitted to a user and for causing advertised products to be transmitted to the user;

the creation computer and the merchant computer being interconnected by a public packet switched computer network;

the creation computer being programmed to create the merchant database, and to transmit the digital advertisements and the product fulfillment items over the network to the merchant computer;

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the merchant computer being programmed to receive the digital advertisements and product fulfillment items over the network, to receive over the network a request for a digital advertisement from a user, to cause the digital advertisement to be sent to the user over the network, to receive over the network from the user a product request message identifying an advertised product, and to cause the product to be sent to the user in accordance with a product fulfillment item corresponding to the product;

at least a portion of the digital advertisements transmitted by the creation computer to the merchant computer over the network being authenticated by at least one digital signature.

38. A method of operating a merchant computer in a network-based sales system comprising a merchant database that comprises a plurality of digital advertisements and a plurality of respective product fulfillment items, at least one creation computer for creating the merchant database, and at least one merchant computer for causing the digital advertisements to be transmitted to a user and for causing advertised products to be transmitted to the user, the creation computer and the merchant computer being interconnected by a public packet switched computer network, the method comprising the steps of:

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receiving, at the merchant computer, the digital advertisements and the product fulfillment items, the digital advertisements and the product fulfillment items having been transmitted over the network to the merchant computer by the creation computer, the merchant database comprising the digital advertisements and the product fulfillment items having been created by the creation computer;

receiving over the network a request for a digital advertisement from a user;

causing the digital advertisement to be sent to the user over the network;

receiving over the network from the user a product request message identifying an advertised product; and causing the product to be sent to the user in accordance with a product fulfillment item corresponding to the product;

at least a portion of the digital advertisements transmitted by the creation computer to the merchant computer over the network being authenticated by at least one digital signature.

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UNITED STATES PATENT AND TRADEMARK OFFICE
Certificate

Patent No. 5,909,492

Patented: June 1, 1999

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without any deceptive intent, improperly sets forth the inventorship.

Accordingly, it is hereby certified that the correct inventorship of this patent is: Andrew C. Payne, Lincoln, MA (US); Lawrence C. Stewart, Wayland, MA (US); and G. Winfield Treese, Wayland, MA (US).

Signed and Sealed this Third Day of November 2009.

Thomas H. Tarcza
Supervisory Patent Examiner
Art Unit 3662



US005909492C1

(12) **EX PARTE REEXAMINATION CERTIFICATE (5845th)****United States Patent****Payne et al.**(10) **Number:** **US 5,909,492 C1**(45) **Certificate Issued:** ***Aug. 7, 2007**(54) **NETWORK SALES SYSTEM**

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Primary Examiner—Michael O'Neill**Related U.S. Application Data**

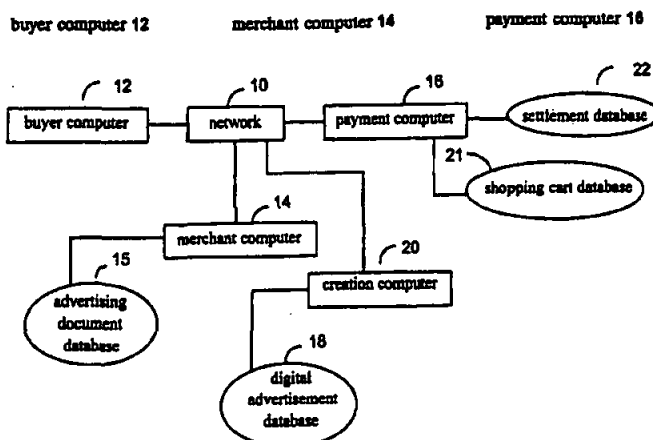
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(51) **Int. Cl.***G06Q 30/00* (2006.01)*G06Q 10/00* (2006.01)*G06Q 20/00* (2006.01)*G07F 7/00* (2006.01)(52) **U.S. Cl.** **705/78; 705/26; 705/27; 705/39; 705/40; 705/44**(58) **Field of Classification Search** None
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(57) **ABSTRACT**

A network-based sales system includes at least one buyer computer for operation by a user desiring to buy a product, at least one merchant computer, and at least one payment computer. The buyer computer, the merchant computer, and the payment computer are interconnected by a computer network. The buyer computer is programmed to receive a user request for purchasing a product, and to cause a payment message to be sent to the payment computer that comprises a product identifier identifying the product. The payment computer is programmed to receive the payment message, to cause an access message to be created that comprises the product identifier and an access message authenticator based on a cryptographic key, and to cause the access message to be sent to the merchant computer. The merchant computer is programmed to receive the access message, to verify the access message authenticator to ensure that the access message authenticator was created using the cryptographic key, and to cause the product to be sent to the user desiring to buy the product.



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EX PARTE
REEXAMINATION CERTIFICATE
ISSUED UNDER 35 U.S.C. 307

THE PATENT IS HEREBY AMENDED AS
INDICATED BELOW.

Matter enclosed in heavy brackets [] appeared in the patent, but has been deleted and is no longer a part of the patent; matter printed in italics indicates additions made to the patent.

AS A RESULT OF REEXAMINATION, IT HAS BEEN DETERMINED THAT:

The patentability of claims 1–38 is confirmed.

New claims 39–108 are added and determined to be patentable.

39. A hypertext statement system in accordance with claim 15, wherein the network is an Internet.

40. A hypertext statement system in accordance with claim 15, wherein the client computer is a buyer computer, and at least one of the server computers is a payment computer.

41. A hypertext statement system in accordance with claim 15, wherein the statement document is sent by at least one of the server computers to the client computer in response to a statement URL sent by the client computer to at least one of the server computers.

42. A hypertext statement system in accordance with claim 41, wherein the statement URL includes a URL authenticator that is a digital signature based on a cryptographic key; wherein the URL authenticator is a hash of information contained in the statement URL; wherein at least one of the server computers verifies whether the statement URL authenticator was created based upon the information contained in the statement URL using the cryptographic key.

43. A hypertext statement system in accordance with claim 42, wherein if verification by at least one of the server computers fails, then at least one of the server computers sends a document to the client computer indicating that access is denied.

44. A hypertext statement system in accordance with claim 42, wherein the statement URL comprises a client computer network address;

wherein the client computer network address is verified by matching it with the network address specified in the statement URL.

45. A hypertext statement system in accordance with claim 44, wherein if verification fails, then at least one of the server computers sends a document to the client computer indicating that access is denied.

46. A hypertext statement system in accordance with claim 42, wherein the client computer prompts the user for an account name and password by creating an account name prompt and a password prompt.

47. A hypertext statement system in accordance with claim 46, wherein at least one of the server computers verifies that the account name and password provided by the user match a previously provided account name and password.

48. A hypertext statement system of claim 47, wherein if the account name and password verification fails, then at least one of the server computers sends a document to the client computer indicating that access to at least a portion of a network sales system is denied.

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49. A hypertext statement system of claim 44, wherein if a payment amount exceeds a threshold, then the user is prompted for security-related information;

wherein at least one of the server computers verifies that the security-related information matches previously provided security-related information.

50. A hypertext statement system in accordance with claim 49, wherein if the security-related verification fails, then the payment computer sends a document to the buyer computer indicating that access is not allowed.

51. A hypertext statement system in accordance with claim 49, wherein at least one of the server computers transmits the statement document to the client computer, and the client computer displays the statement document to the user.

52. A hypertext statement system in accordance with claim 51, wherein the client computer is a buyer computer;

wherein at least one of the server computers retrieves settlement data from a settlement database for use in generating the statement document.

53. A hypertext statement system in accordance with claim 15, wherein the transaction detail hypertext link includes a transaction detail URL;

wherein the transaction detail URL includes a URL authenticator that is a digital signature based on a cryptographic key;

wherein the URL authenticator is a hash of information contained in the transaction detail URL;

wherein at least one of the server computers verifies whether the transaction detail authenticator was created from information contained in the transaction detail URL based upon the cryptographic key;

wherein the transaction detail URL comprises a client network address;

wherein the client computer network address is verified by matching it with the network address specified in the transaction detail URL;

wherein the client computer prompts the user for an account name and password by creating an account name prompt and a password prompt;

wherein at least one of the server computers verifies that the account name and password entered by the user match a previously provided account name and password;

wherein if a payment amount exceeds a threshold, then the user is prompted for security-related information;

wherein at least one of the server computers verifies that the security-related information matches previously provided security-related information.

54. A hypertext statement system in accordance with claim 53, wherein the client computer is a buyer computer, and at least one of the server computers is a payment computer.

55. A hypertext statement system in accordance with claim 15, wherein the user requests customer service;

wherein in response to the user request, the client computer sends a customer service URL to at least one of the server computers, and at least one of the server computers creates a customer service form and sends the form to the client computer;

wherein the form contains an area for the user to provide comments.

56. A hypertext statement system in accordance with claim 55, wherein the client computer sends the user's comments to at least one of the server computers;

wherein at least one of the server computers processes the user comments.

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57. A hypertext statement system in accordance with claim 15, wherein the user requests display of a product listed on the statement document.

58. A hypertext statement system in accordance with claim 57, wherein the client computer sends an access URL to a second server computer.

59. A hypertext statement system in accordance with claim 58, wherein the access URL comprises an authenticator based on a cryptographic key;

wherein the access URL authenticator is a hash of other information in the access URL;

wherein the second server computer verifies whether the access URL authenticator was created from information contained in the access URL using a cryptographic key;

wherein the access URL comprises a duration of time for access indicator, and the second server computer verifies whether the duration time for access has expired;

wherein the access URL comprises a buyer network address indicator, and the second server computer verifies that a buyer computer network address is the same as the buyer network address indicated in the access URL;

wherein the second server transmits a fulfillment document to the client computer.

60. A hypertext statement system in accordance with claim 15, wherein the statement document includes information on transactions by the user that took place in a given month.

61. A hypertext statement system in accordance with claim 60, wherein the information on transactions by the user includes at least one of the following types of information: a date of transaction, an identification of the product, a payment amount, and a merchant identifier.

62. A hypertext statement system in accordance with claim 60, wherein the statement document also includes one or more links to information regarding previous transactions by the user.

63. A hypertext statement system in accordance with claim 60, wherein for a transaction there is a transaction detail URL that includes a transaction identifier, a buyer network address, and a transaction detail URL authenticator.

64. A hypertext statement system in accordance with claim 63, wherein at least one of the server computers receives the transaction detail URL;

wherein the transaction detail URL includes a URL authenticator that is a digital signature based on a cryptographic key;

wherein the URL authenticator is a hash of information contained in the transaction detail URL;

wherein at least one of the server computers verifies whether the transaction detail URL authenticator was created from information contained in the transaction detail URL using the cryptographic key;

wherein the transaction detail URL comprises a client computer network address, and the client computer network address is verified by matching it with the network address specified in the transaction detail URL;

wherein the client computer prompts the user for an account name and password by creating an account name prompt and a password prompt, and at least one of the server computers verifies that the account name and password entered by the user match a previously provided account name and password;

wherein if a verification by at least one of the server computers fails, then at least one of the server com-

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puters sends a document to the client computer indicating that access is denied.

65. A hypertext statement system of claim 15, wherein if a payment amount provided by the user exceeds a threshold, then the user is prompted for security-related information, and at least one of the server computers verifies that the security information matches previously provided security-related information.

66. A hypertext statement system in accordance with claim 15, wherein the transaction detail document includes transaction information and merchant information.

67. A hypertext statement system in accordance with claim 66, wherein the transaction information includes at least one of the following types of information: a URL where a product is located, a transaction log identifier, a currency type used, a transaction date, an expiration time, an initiator number, a product description, a transaction amount, a beneficiary number, an IP address, a transaction type indicator, and a domain corresponding to the product.

68. A hypertext statement system in accordance with claim 66, wherein the merchant information includes at least one of the following types of information: a merchant telephone number, a merchant address, a merchant FAX number, a merchant e-mail address, a merchant principal name, a merchant home URL, and a merchant country.

69. A hypertext statement system in accordance with claim 66, wherein the transaction detail document comprises a customer feedback form, including the following fields for data entry by the user: account name, e-mail address, subject, and comments.

70. A hypertext statement system in accordance with claim 69, wherein the customer feedback form includes a hyperlink that a user activates to send the form to at least one of the server computers.

71. A hypertext statement system in accordance with claim 66, wherein the transaction detail document comprises a message to the user inviting comments by e-mail and giving an e-mail address.

72. A hypertext statement system in accordance with claim 66, wherein the transaction detail document further comprises a message to the user inviting comments by FAX and giving a FAX number.

73. A hypertext statement system in accordance with claim 15, wherein a digital advertising document is provided to the client computer.

74. The method of claim 16, wherein the network is an Internet.

75. The method of claim 16, wherein the client computer is a buyer computer, and at least one of the server computers is a payment computer.

76. The method of claim 16, wherein the statement document is sent by at least one of the server computers to the client computer in response to a statement URL sent by the client computer to at least one of the server computers.

77. The method of claim 76, wherein the statement URL includes a URL authenticator that is a digital signature based on a cryptographic key;

wherein the URL authenticator is a hash of information contained in the statement URL;

wherein at least one of the server computers verifies whether the statement URL authenticator was created based upon the information contained in the statement URL using the cryptographic key.

78. The method of claim 77, wherein if verification by at least one of the server computers fails, then at least one of the server computers sends a document to the client computer indicating that access is denied.

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79. The method of claim 77, wherein the statement URL comprises a client computer network address;

wherein the client computer network address is verified by matching it with the network address specified in the statement URL.

80. The method of claim 79, wherein if verification fails, then at least one of the server computers sends a document to the client computer indicating that access is denied.

81. The method of claim 77, wherein the client computer prompts the user for an account name and password by creating an account name prompt and a password prompt.

82. The method of claim 81, wherein at least one of the server computers verifies that the account name and password provided by the user match a previously provided account name and password.

83. The method of claim 82, wherein if the account name and password verification fails, then at least one of the server computers sends a document to the client computer indicating that access to at least a portion of a network sales system is denied.

84. The method of claim 79, wherein if a payment amount exceeds a threshold, then the user is prompted for security-related information;

wherein at least one of the server computers verifies that the security-related information matches previously provided security-related information.

85. The method of claim 84, wherein if the security-related verification fails, then the payment computer sends a document to the buyer computer indicating that access is not allowed.

86. The method of claim 84, wherein at least one of the server computers transmits the statement document to the client computer and the client computer displays the statement document to the user.

87. The method of claim 86, wherein the client computer is a buyer computer;

wherein at least one of the server computers retrieves settlement data from a settlement database for use in generating the statement document.

88. The method of claim 16, wherein the transaction detail hypertext link includes a transaction detail URL;

wherein the transaction detail URL includes a URL authenticator that is a digital signature based on a cryptographic key;

wherein the URL authenticator is a hash of information contained in the transaction detail URL;

wherein at least one of the server computers verifies whether the transaction detail URL authenticator was created from information contained in the transaction detail URL based upon the cryptographic key;

wherein the transaction detail URL comprises a client network address;

wherein the client computer network address is verified by matching it with the network address specified in the transaction detail URL;

wherein the client computer prompts the use for an account name and password by creating an account name prompt and a password prompt;

wherein at least one of the server computers verifies that the account name and password entered by the user match a previously provided account name and password;

wherein if a payment amount exceeds a threshold, then the user is prompted for security-related information;

wherein at least one of the server computers verifies that the security-related information matches previously provided security-related information.

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89. The method of claim 88, wherein the client computer is a buyer computer, and at least one of the server computers is a payment computer.

90. The method of claim 16, wherein the user requests customer service;

wherein in response to the user request, the client computer sends a customer service URL to at least one of the server computers, and at least one of the server computers creates a customer service form and sends the form to the client computer;

wherein the form contains an area for the user to provide comments.

91. The method of claim 90, wherein the client computer sends the user's comments to at least one of the server computers;

wherein at least one of the server computers processes the user comments.

92. The method of claim 16, wherein the user requests display of a product listed on the statement document.

93. The method of claim 92, wherein the client computer sends an access URL to a second server computer.

94. The method of claim 93, wherein the access URL comprises an authenticator based on a cryptographic key;

wherein the access URL authenticator is a hash of other information in the access URL;

wherein the second server computer verifies whether the access URL authenticator was created from information contained in the access URL using a cryptographic key;

wherein the access URL comprises a duration of time for access indicator, and the second server computer verifies whether the duration time for access has expired;

wherein the access URL comprises a buyer network address indicator, and the second server computer verifies that a buyer computer network address is the same as the buyer network address indicated in the access URL;

wherein the second server transmits a fulfillment document to the client computer.

95. The method of claim 16, wherein the statement document includes information on transactions by the user that took place in a given month.

96. The method of claim 95, wherein the information on transactions by the user includes at least one of the following types of information: a date of transaction, an identification of the product, a payment amount, and a merchant identifier.

97. The method of claim 95, wherein the statement document also includes one or more links to information regarding previous transactions by the user.

98. The method of claim 95, wherein for a transaction there is a transaction detail URL that includes a transaction identifier, a buyer network address, and a transaction detail URL authenticator.

99. The method of claim 98, wherein at least one of the server computers receives the transaction detail URL;

wherein the transaction detail URL includes a URL authenticator that is a digital signature based on a cryptographic key;

wherein the URL authenticator is a hash of information contained in the transaction detail URL;

wherein at least one of the server computers verifies whether the transaction detail URL authenticator was created from information contained in the transaction detail URL using the cryptographic key;

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wherein the transaction detail URL comprises a client computer network address, and the client computer network address is verified by matching it with the network address specified in the transaction detail URL;

wherein the client computer prompts the user for an account name and password by creating an account name prompt and a password prompt, and at least one of the server computers verifies that the account name and password entered by the user match a previously provided account name and password;

wherein if a verification by at least one of the server computers fails, then at least one of the server computers sends a document to the client computer indicating that access is denied.

100. The method of claim 16, wherein if a payment amount provided by the user exceeds a threshold, then the user is prompted for security-related information, and at least one of the server computers verifies that the security information matches previously provided security-related information.

101. The method of claim 16, wherein the transaction detail document includes transaction information and merchant information.

102. The method of claim 101, wherein the transaction information includes at least one of the following types of information: a URL where a product is located, a transaction log identifier, a currency type used, a transaction date,

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an expiration time, an initiator number, a product description, a transaction amount, a beneficiary number, an IP address, a transaction type indicator, and a domain corresponding to the product.

5 103. The method of claim 101, wherein the merchant information includes at least one of the following types of information: a merchant telephone number, a merchant address, a merchant FAX number, a merchant e-mail address, a merchant principal name, a merchant home URL, and a merchant country.

104. The method of claim 101, wherein the transaction detail document comprises a customer feedback form, including the following fields for data entry by the user: account name, e-mail address, subject, and comments.

105. The method of claim 104, wherein the customer feedback form includes a hyperlink that a user activates to send the form to at least one of the server computers.

106. The method of claim 101, wherein the transaction detail document comprises a message to the user inviting comments by e-mail and giving an e-mail address.

107. The method of claim 101, wherein the transaction detail document further comprises a message to the user inviting comments by FAX and giving a FAX number.

25 108. The method of claim 16, wherein a digital advertising document is provided to the client computer.

* * * * *



US007272639B1

(12) **United States Patent**
Levergood et al.

(10) **Patent No.:** **US 7,272,639 B1**
 (45) **Date of Patent:** ***Sep. 18, 2007**

(54) **INTERNET SERVER ACCESS CONTROL
 AND MONITORING SYSTEMS**

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(*) **Notice:** Subject to any disclaimer, the term of this
 patent is extended or adjusted under 35
 U.S.C. 154(b) by 0 days.

This patent is subject to a terminal dis-
 claimer.

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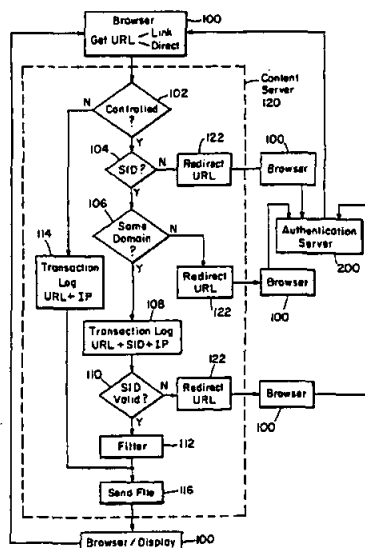
Primary Examiner—Patrice Winder

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(57) **ABSTRACT**

This invention relates to methods for controlling and moni-
 toring access to network servers. In particular, the process
 described in the invention includes client-server sessions
 over the Internet. In this environment, when the user
 attempts to access an access-controlled file, the server sub-
 jects the request to a secondary server which determines
 whether the client has an authorization or valid account.
 Upon such verification, the user is provided with a session
 identification which allows the user to access to the
 requested file as well as any other files within the present
 protection domain.

79 Claims, 7 Drawing Sheets



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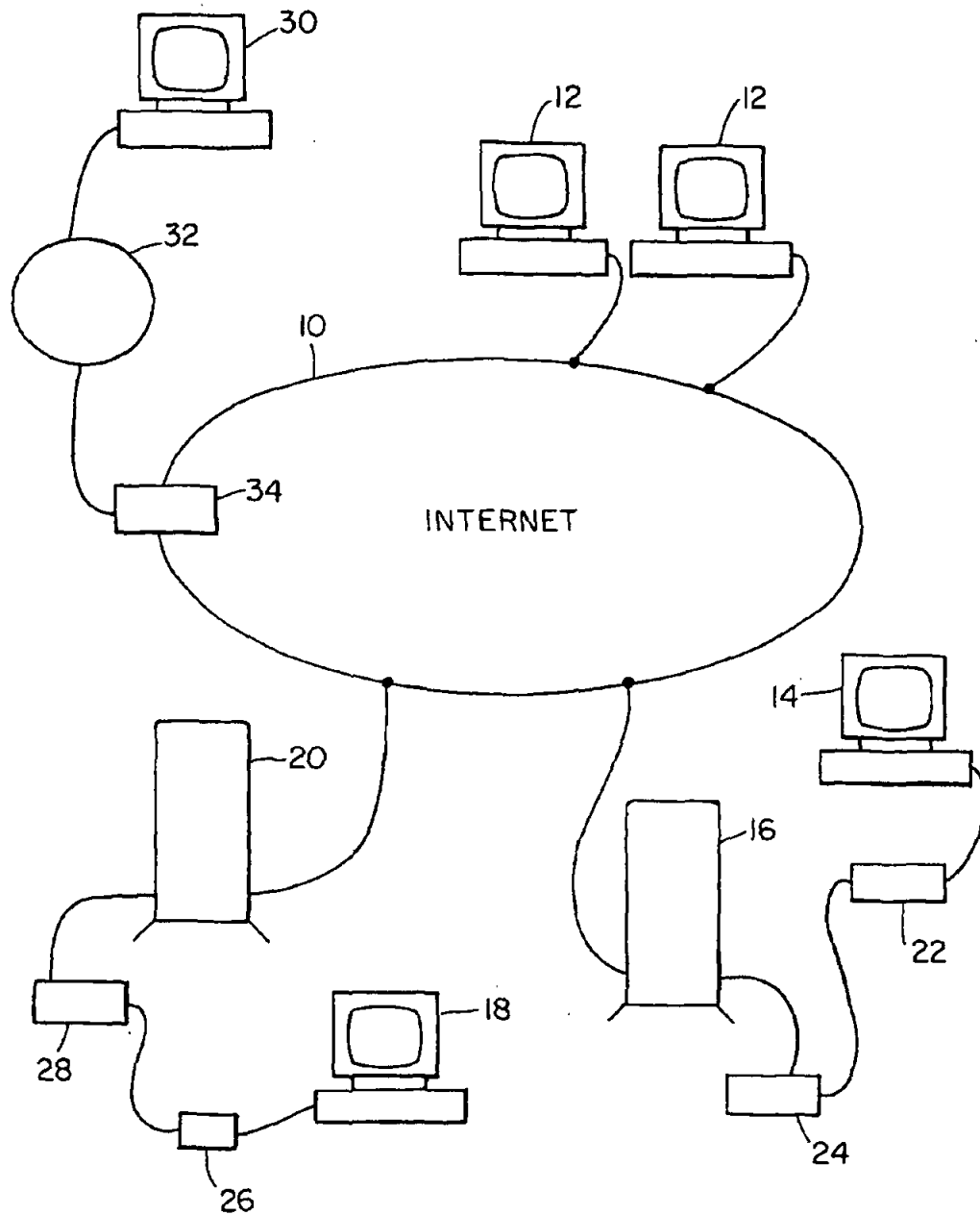


FIG. 1

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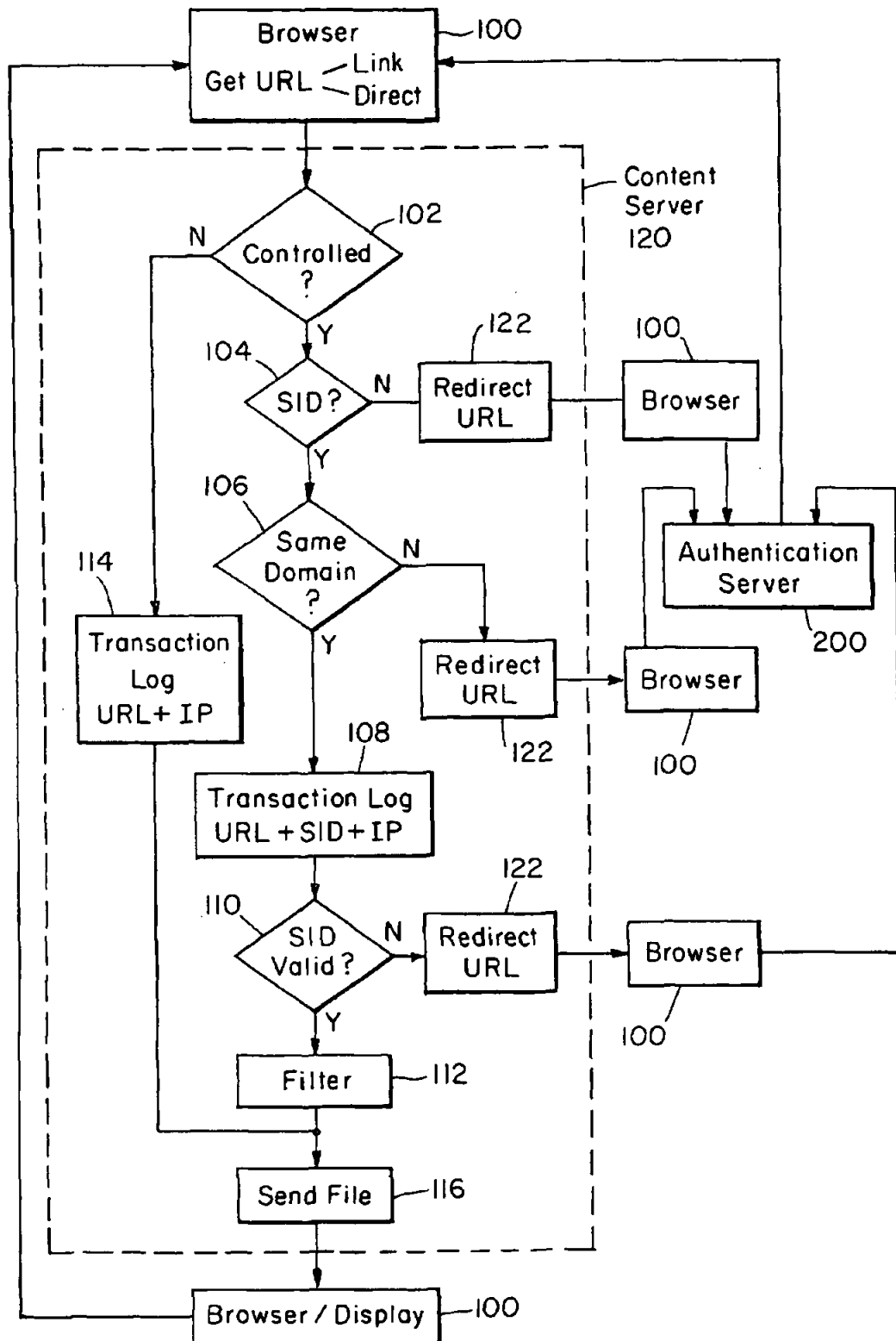


FIG. 2A

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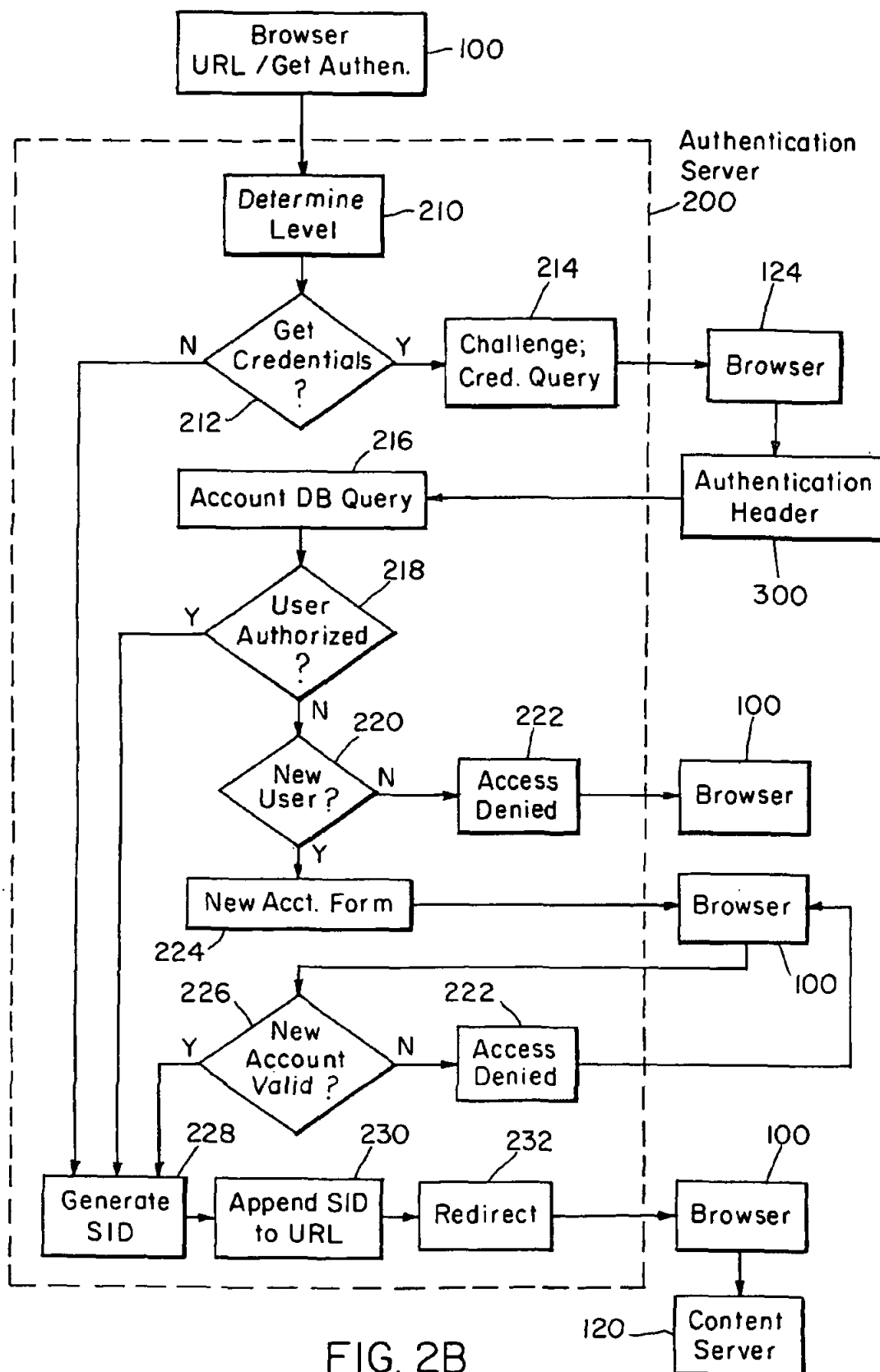


FIG. 2B

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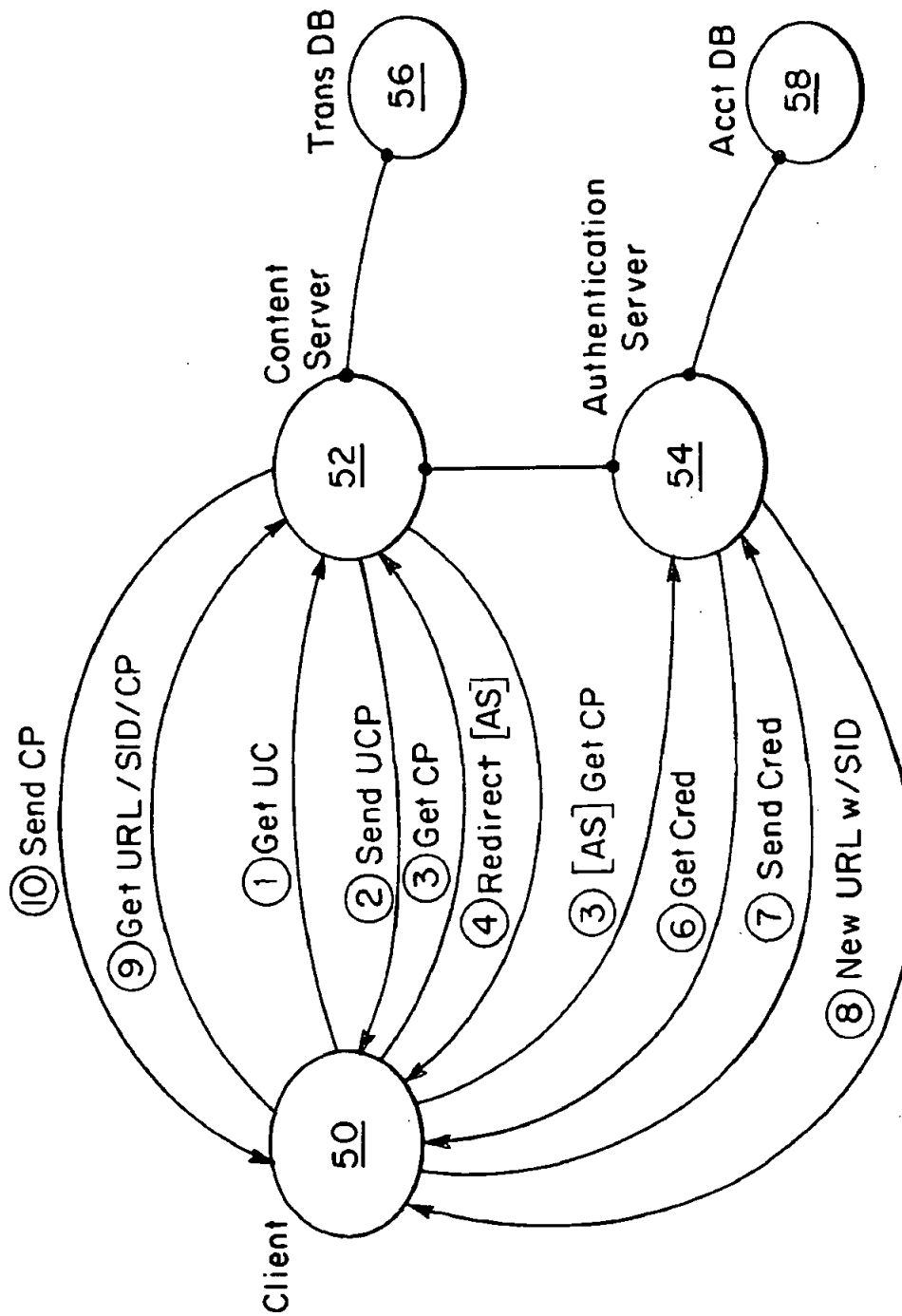


FIG. 3

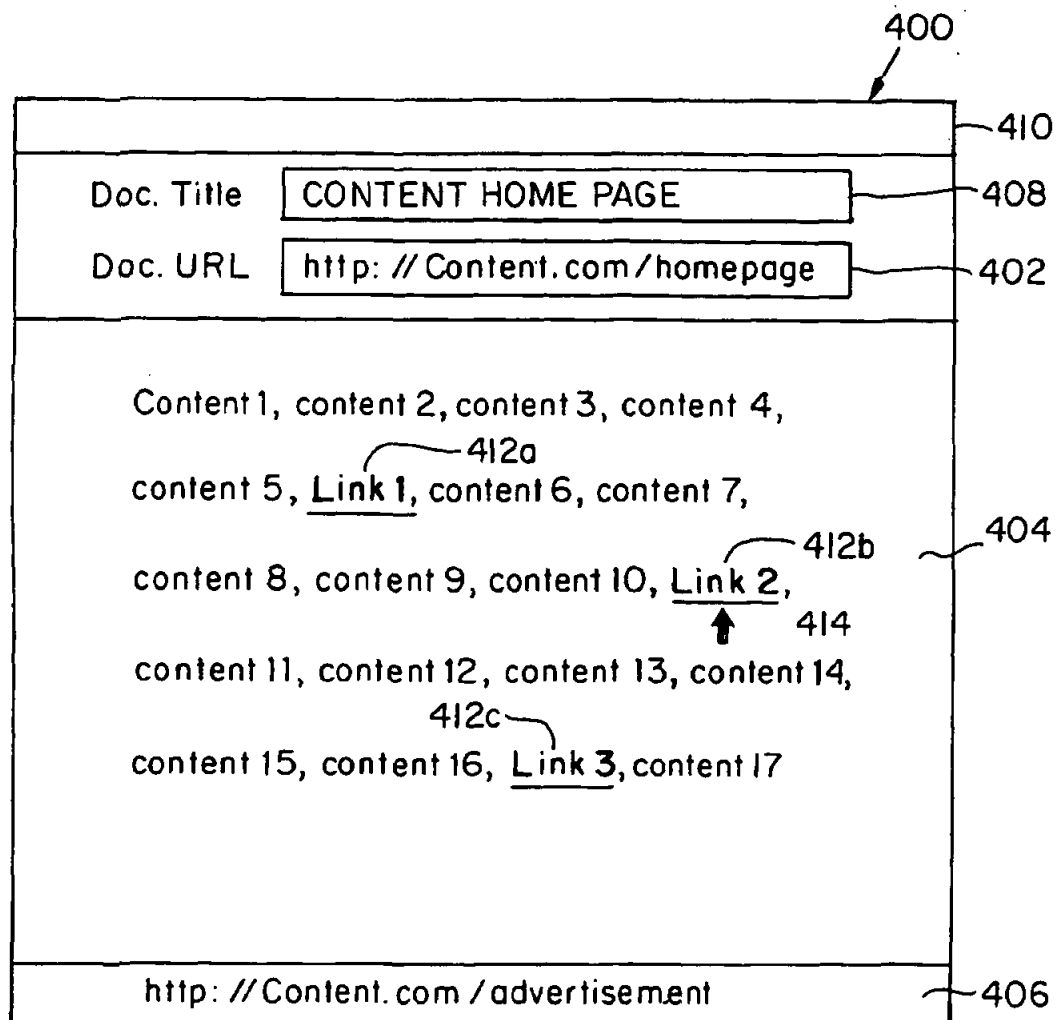


FIG. 4

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Document View	
<u>File</u>	<u>Options</u> <u>Navigate</u> <u>Annotate</u> <u>Documents</u> <u>Help</u>
Title:	<input type="text" value="How to join"/>
URL:	<input type="text" value="http://auth.com/service/nph-createacct.cgi"/>
1. First name	<input type="text"/>
2. Last name	<input type="text"/>
3. Choose a screen name (no more than 15 characters)	<input type="text"/>
4. Choose a password (no more than 15 characters)	
Password:	<input type="text"/>
Re-enter password:	<input type="text"/>
5. E-mail address	<input type="text"/>
6. Your birthdate (MM/DD/YY)	<input type="text"/>
7. U.S. zip code, or country code	
Zip/postal code:	<input type="text"/>
ISO country code	<input type="text" value="US"/>

FIG. 5

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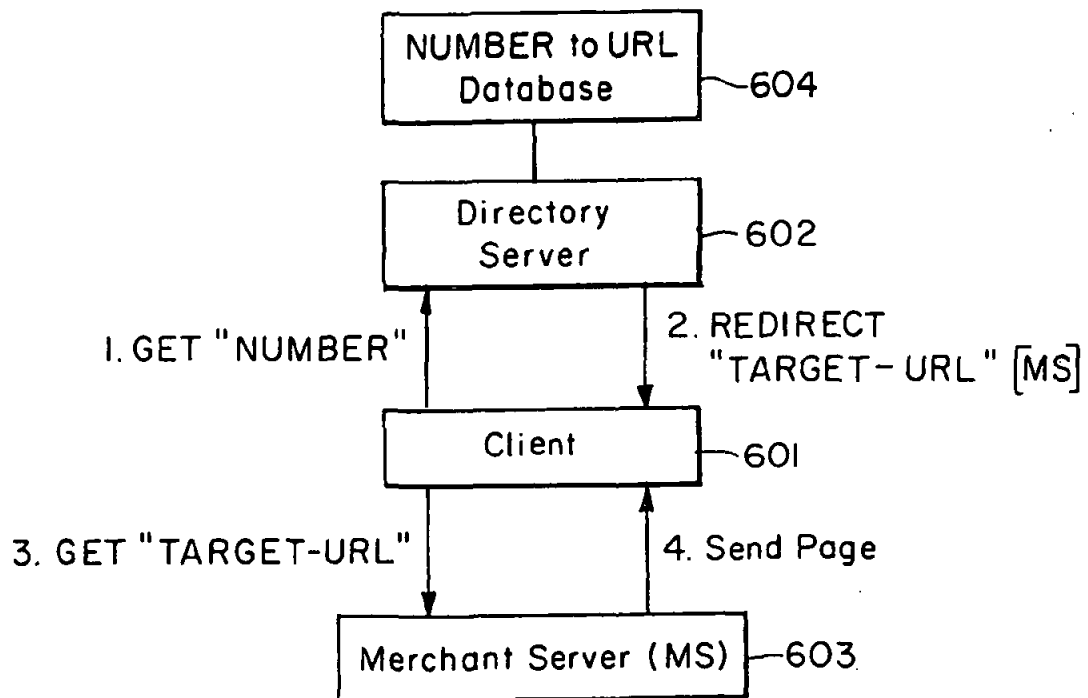


FIG. 6

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INTERNET SERVER ACCESS CONTROL AND MONITORING SYSTEMS

RELATED APPLICATION

This application is a Continuation of U.S. Ser. No. 08/474, 096, filed Jun. 7, 1995, now U.S. Pat. No. 5,708,780 the entire teachings of which are incorporated herein by reference.

BACKGROUND TO THE INVENTION

The Internet, which started in the late 1960s, is a vast computer network consisting of many smaller networks that span the entire globe. The Internet has grown exponentially, and millions of users ranging from individuals to corporations now use permanent and dial-up connections to use the Internet on a daily basis worldwide. The computers or networks of computers connected within the Internet, known as "hosts", allow public access to databases featuring information in nearly every field of expertise and are supported by entities ranging from universities and government to many commercial organizations.

The information on the Internet is made available to the public through "servers". A server is a system running on an Internet host for making available files or documents contained within that host. Such files are typically stored on magnetic storage devices, such as tape drives or fixed disks, local to the host. An Internet server may distribute information to any computer that requests the files on a host. The computer making such a request is known as the "client", which may be an Internet-connected workstation, bulletin board system or home personal computer (PC).

TCP/IP (Transmission Control Protocol/Internet Protocol) is one networking protocol that permits full use of the Internet. All computers on a TCP/IP network need unique ID codes. Therefore, each computer or host on the Internet is identified by a unique number code, known as the IP (Internet Protocol) number or address, and corresponding network and computer names. In the past, an Internet user gained access to its resources only by identifying the host computer and a path through directories within the host's storage to locate a requested file. Although various navigating tools have helped users to search resources on the Internet without knowing specific host addresses, these tools still require a substantial technical knowledge of the Internet.

The World-Wide Web (Web) is a method of accessing information on the Internet which allows a user to navigate the Internet resources intuitively, without IP addresses or other technical knowledge. The Web dispenses with command-line utilities which typically require a user to transmit sets of commands to communicate with an Internet server. Instead, the Web is made up of hundreds of thousands of interconnected "pages", or documents, which can be displayed on a computer monitor. The Web pages are provided by hosts running special servers. Software which runs these Web servers is relatively simple and is available on a wide range of computer platforms including PC's. Equally available is a form of client software, known as a Web "browser", which is used to display Web pages as well as traditional non-Web files on the client system. Today, the Internet hosts which provide Web servers are increasing at a rate of more than 300 per month, en route to becoming the preferred method of Internet communication.

Created in 1991, the Web is based on the concept of "hypertext" and a transfer method known as "HTTP" (Hy-

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perertext Transfer Protocol). HTTP is designed to run primarily over TCP/IP and uses the standard Internet setup, where a server issues the data and a client displays or processes it. One format for information transfer is to create documents using Hypertext Markup Language (HTML). HTML pages are made up of standard text as well as formatting codes which indicate how the page should be displayed. The Web client, a browser, reads these codes in order to display the page. The hypertext conventions and related functions of the world wide web are described in the appendices of U.S. patent application Ser. No. 08/328,133, filed on Oct. 24, 1994, by Payne et al. which is incorporated herein by reference.

Each Web page may contain pictures and sounds in addition to text. Hidden behind certain text, pictures or sounds are connections, known as "hypertext links" ("links"), to other pages within the same server or even on other computers within the Internet. For example, links may be visually displayed as words or phrases that may be underlined or displayed in a second color. Each link is directed to a web page by using a special name called a URL (Uniform Resource Locator). URLs enable a Web browser to go directly to any file held on any Web server. A user may also specify a known URL by writing it directly into the command line on a Web page to jump to another Web page.

The URL naming system consists of three parts: the transfer format, the host name of the machine that holds the file, and the path to the file. An example of a URL may be:

`http://www.college.univ.edu/Adir/Bdir/Cdir/page.html`,

where "http" represents the transfer protocol; a colon and two forward slashes (://) are used to separate the transfer format from the host name; "www.college.univ.edu" is the host name in which "www" denotes that the file being requested is a Web page; "/Adir/Bdir/Cdir" is a set of directory names in a tree structure, or a path, on the host machine; and "page.html" is the file name with an indication that the file is written in HTML.

The Internet maintains an open structure in which exchanges of information are made cost-free without restriction. The free access format inherent to the Internet, however, presents difficulties for those information providers requiring control over their Internet servers. Consider for example, a research organization that may want to make certain technical information available on its Internet server to a large group of colleagues around the globe, but the information must be kept confidential. Without means for identifying each client, the organization would not be able to provide information on the network on a confidential or preferential basis. In another situation, a company may want to provide highly specific service tips over its Internet server only to customers having service contracts or accounts.

Access control by an Internet server is difficult for at least two reasons. First, when a client sends a request for a file on a remote Internet server, that message is routed or relayed by a web of computers connected through the Internet until it reaches its destination host. The client does not necessarily know how its message reaches the server. At the same time, the server makes responses without ever knowing exactly who the client is or what its IP address is. While the server may be programmed to trace its clients, the task of tracing is often difficult, if not impossible. Secondly, to prevent unwanted intrusion into private local area networks (LAN), system administrators implement various data-flow control mechanisms, such as the Internet "firewalls", within their networks. An Internet firewall allows a user to reach the

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Internet anonymously while preventing intruders of the outside world from accessing the user's LAN.

SUMMARY OF THE INVENTION

The present invention relates to methods of processing service requests from a client to a server through a network. In particular the present invention is applicable to processing client requests in an HTTP (Hypertext Transfer Protocol) environment, such as the World-Wide Web (Web). One aspect of the invention involves forwarding a service request from the client to the server and appending a session identification (SID) to the request and to subsequent service requests from the client to the server within a session of requests. In a preferred embodiment, the present method involves returning the SID from the server to the client upon an initial service request made by the client. A valid SID may include an authorization identifier to allow a user to access controlled files.

In a preferred embodiment, a client request is made with a Uniform Resource Locator (URL) from a Web browser. Where a client request is directed to a controlled file without an SID, the Internet server subjects the client to an authorization routine prior to issuing the SID, the SID being protected from forgery. A content server initiates the authorization routine by redirecting the client's request to an authentication server which may be at a different host. Upon receiving a redirected request, the authentication server returns a response to interrogate the client and then issues an SID to a qualified client. For a new client, the authentication server may open a new account and issue an SID thereafter. A valid SID typically comprises a user identifier, an accessible domain, a key identifier, an expiration time such as date, the IP address of the user computer, and an unforgeable digital signature such as a cryptographic hash of all of the other items in the SID encrypted with a secret key. The authentication server then forwards a new request consisting of the original URL appended by the SID to the client in a REDIRECT. The modified request formed by a new URL is automatically forwarded by the client browser to the content server.

When the content server receives a URL request accompanied by an SID, it logs the URL with the SID and the user IP address in a transaction log and proceeds to validate the SID. When the SID is so validated, the content server sends the requested document for display by the client's Web browser.

In the preferred embodiment, a valid SID allows the client to access all controlled files within a protection domain without requiring further authorization. A protection domain is defined by the service provider and is a collection of controlled files of common protection within one or more servers.

When a client accesses a controlled Web page with a valid SID, the user viewing the page may want to traverse a link to view another Web page. There are several possibilities. The user may traverse a link to another page in the same path. This is called a "relative link". A relative link may be made either within the same domain or to a different domain. The browser on the client computer executes a relative link by rewriting the current URL to replace the old controlled page name with a new one. The new URL retains all portions of the old, including the SID, except for the new page name. If the relative link points to a page in the same protection domain, the SID remains valid, and the request is honored. However, if the relative link points to a controlled page in a different protection domain, the SID is no longer valid, and

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the client is automatically redirected to forward the rewritten URL to the authentication server to update the SID. The updated or new SID provides access to the new domain if the user is qualified.

The user may also elect to traverse a link to a document in a different path. This is called an "absolute link". In generating a new absolute link, the SID is overwritten by the browser. In the preferred embodiment, the content server, in each serving of a controlled Web page within the domain, filters the page to include the current SID in each absolute URL on the page. Hence, when the user elects to traverse an absolute link, the browser is facilitated with an authenticated URL which is directed with its SID to a page in a different path. In another embodiment, the content server may forego the filtering procedure as above-described and redirect an absolute URL to the authentication server for an update.

An absolute link may also be directed to a controlled file in a different domain. Again, such a request is redirected to the authentication server for processing of a new SID. An absolute link directed to an uncontrolled file is accorded an immediate access.

In another embodiment, a server access control may be maintained by programming the client browser to store an SID or a similar tag for use in each URL call to that particular server. This embodiment, however, requires a special browser which can handle such communications and was generally not suitable for early browser formats common to the Web. However, it may now be implemented in cookie compatible browsers.

Another aspect of the invention is to monitor the frequency and duration of access to various pages both controlled and uncontrolled. A transaction log within a content server keeps a history of each client access to a page including the link sequence through which the page was accessed. Additionally, the content server may count the client requests exclusive of repeated requests from a common client. Such records provide important marketing feedback including user demand, access pattern, and relationships between customer demographics and accessed pages and access patterns.

The above and other features of the invention including various novel details of construction and combinations of parts will now be more particularly described with reference to the accompanying drawings and pointed out in the claims. It will be understood that the particular devices and methods embodying the invention are shown by way of illustration only and not as limitations of the invention. The principles and features of this invention may be employed in varied and numerous embodiments without departing from the scope of the invention.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a diagram illustrating the Internet operation.

FIG. 2A is a flowchart describing the preferred method of Internet server access control and monitoring.

FIG. 2B is a related flowchart describing the details of the authentication process.

FIG. 3 illustrates an example of a client-server exchange session involving the access control and monitoring method of the present invention.

FIG. 4 is an example of a World Wide Web page.

FIG. 5 is an example of an authorization form page.

FIG. 6 is a diagram describing the details of the translation of telephone numbers to URLs.

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DETAILED DESCRIPTION OF THE
INVENTION

Referring now to the drawings, FIG. 1 is a graphical illustration of the Internet. The Internet 10 is a network of millions of interconnected computers 12 including systems owned by Internet providers 16 and information systems (BBS) 20 such as Compuserve or America Online. Individual or corporate users may establish connections to the Internet in several ways. A user on a home PC 14 may purchase an account through the Internet provider 16. Using a modem 22, the PC user can dial up the Internet provider to connect to a high speed modem 24 which, in turn, provides a full service connection to the Internet. A user 18 may also make a somewhat limited connection to the Internet through a BBS 20 that provides an Internet gateway connection to its customers.

FIG. 2A is a flowchart detailing the preferred process of the present invention and FIG. 4 illustrates a sample Web page displayed at a client by a browser. The page includes text 404 which includes underlined link text 412. The title bar 408 and URL bar 402 display the title and URL of the current web page, respectively. As shown in FIG. 4, the title of the page is "Content Home Page" and the corresponding URL is "http://content.com/homepage". When a cursor 414 is positioned over link text 412b, the page which would be retrieved by clicking a mouse is typically identified in a status bar 406 which shows the URL for that link. In this example the status bar 406 shows that the URL for the pointed link 412b is directed to a page called "advertisement" in a commercial content server called "content". By clicking on the link text, the user causes the browser to generate a URL GET request at 100 in FIG. 2A. The browser forwards the request to a content server 120, which processes the request by first determining whether the requested page is a controlled document 102. If the request is directed to an uncontrolled page, as in "advertisement" page in this example, the content server records the URL and the IP address, to the extent it is available, in the transaction log 114. The content server then sends the requested page to the browser 116 for display on the user computer 117.

If the request is directed to a controlled page, the content server determines whether the URL contains an SID 102. For example, a URL may be directed to a controlled page name "report", such as "http://content.com/report", that requires an SID. If no SID is present, as in this example, the content server sends a "REDIRECT" response 122 to the browser 100 to redirect the user's initial request to an authentication server 200 to obtain a valid SID. The details of the authentication process are described in FIG. 2B and will be discussed later, but the result of the process is an SID provided from the authentication server to the client. In the above example, a modified URL appended with an SID may be: "http://content.com/[SID]/report". The preferred SID is a sixteen character ASCII string that encodes 96 bits of SID data, 6 bits per character. It contains a 32-bit digital signature, a 16-bit expiration date with a granularity of one hour, a 2-bit key identifier used for key management, an 8-bit domain comprising a set of information files to which the current SID authorizes access, and a 22-bit user identifier. The remaining bits are reserved for expansion. The digital signature is a cryptographic hash of the remaining items in the SID and the authorized IP address which are encrypted with a secret key which is shared by the authentication and content servers.

If the initial GET URL contains a SID, the content server determines whether the request is directed to a page within

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the current domain 106. If the request having a SID is directed to a controlled page of a different domain, the SID is no longer valid and, again, the user is redirected to the authentication server 122.

If the request is for a controlled page within the current domain, the content server proceeds to log the request URL, tagged with SID, and the user IP address in the transaction log 108. The content server then validates the SID 110. Such validation includes the following list of checks: (1) the SID's digital signature is compared against the digital signature computed from the remaining items in the SID and the user IP address using the secret key shared by the authentication and content servers; (2) the domain field of the SID is checked to verify that it is within the domain authorized; and (3) the EXP field of the SID is checked to verify that it is later than the current time.

If the validation passes, the content server searches the page to be forwarded for any absolute URL links contained therein 112, that is, any links directed to controlled documents in different content servers. The content server augments each absolute URL with the current SID to facilitate authenticated accesses across multiple content servers. The requested page as processed is then transmitted to the client browser for display 117. The user viewing the requested Web page may elect to traverse any link on that page to trigger the entire sequence again 100.

FIG. 2B describes the details of the authentication process. The content server may redirect the client to an authentication server. The REDIRECT URL might be: "http://auth.com/authenticate?domain={domain}&URL=http://content.com/report". That URL requests authentication and specifies the domain and the initial URL. In response to the REDIRECT, the client browser automatically sends a GET request with the provided URL.

Whenever the content server redirects the client to the authentication server 200, the authentication server initiates the authorization process by validating that it is for an approved content server and determining the level of authentication required for the access requested 210. Depending on this level, the server may challenge the user 212 for credentials. If the request is for a low level document, the authentication may issue an appropriate SID immediately 228 and forego the credential check procedures. If the document requires credentials, the authentication server sends a "CHALLENGE" response which causes the client browser to prompt the user for credentials 214. A preferred credential query typically consists of a request for user name and password. If the user is unable to provide a password, the access is denied. The browser forms an authorization header 300 from the information provided, and resends a GET request to the authentication server using the last URL along with an authorization header. For example, a URL of such a GET request may be: "http://auth.com/authenticate?domain={domain}&URL=http://content.com/report and the authorization header may be: "AUTHORIZE: [authorization]"

Upon receiving the GET request, the authentication server queries an account database 216 to determine whether the user is authorized 218 to access the requested document. A preferred account database may contain a user profile which includes information for identifying purposes, such as client IP address and password, as well as user demographic information, such as user age, home address, hobby, or occupation, for later use by the content server. If the user is authorized, an SID is generated 228 as previously described. If the user is not cleared for authorization, the authentication server checks to see if the user qualifies for a new account

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220. If the user is not qualified to open a new account, a page denying access 222 is transmitted to the client browser 100. If the user is qualified, the new user is sent a form page such as illustrated in FIG. 5 to initiate a real-time on-line registration 224. The form may, for example, require personal information and credit references from the user. The browser is able to transmit the data entered by the user in the blanks 502 as a "POST" message to the authentication server. A POST message causes form contents to be sent to the server in a data body other than as part of the URL. If the registration form filled out by the new user is valid 226, an appropriate SID is generated 228. If the registration is not valid, access is again denied 222.

An SID for an authorized user is appended ("tagged") 230 to the original URL directed to a controlled page on the content server. The authentication server then transmits a REDIRECT response 232 based on the tagged URL to the client browser 100. The modified URL, such as "http://content.com/[SID]/report" is automatically forwarded to the content server 120.

FIG. 3, illustrates a typical client-server exchange involving the access control and monitoring method of the present invention. In Step 1, the client 50 running a browser transmits a GET request through a network for an uncontrolled page (UCP). For example, the user may request an advertisement page by transmitting a URL "http://content.com/advertisement", where "content.com" is the server name and "advertisement" is the uncontrolled page name. In Step 2, the content server 52 processes the GET request and transmits the requested page, "advertisement". The content server also logs the GET request in the transaction database 56 by recording the URL, the client IP address, and the current time.

In Step 3, the user on the client machine may elect to traverse a link in the advertisement page directed to a controlled page (CP). For example, the advertisement page may contain a link to a controlled page called "report". Selecting this link causes the client browser 50 to forward a GET request through a URL which is associated with the report file "http://content.com/report". The content server 52 determines that the request is to a controlled page and that the URL does not contain an SID. In Step 4, the content server transmits a REDIRECT response to the client, and, in Step 5, the browser automatically sends the REDIRECT URL to the authentication server 54. The REDIRECT URL sent to the authentication server may contain the following string:

"http://auth.com/authenticate?domain=[domain]
&URL=http://content.com/report"

The authentication server processes the REDIRECT and determines whether user credentials (CRED) are needed for authorization. In Step 6, the authentication server transmits a "CHALLENGE" response to the client. As previously described, typical credentials consist of user name and password. An authorization header based on the credential information is then forwarded by the client browser to the authentication server. For example, a GET URL having such an authorization header is: "http://auth.com/authenticate?domain=[domain]&URL=http://content.com/report and the authorization header may be: "AUTHORIZE: [authorization]". The authentication server processes the GET request by checking the Account Database 58. If a valid account exists for the user, an SID is issued which authorizes access to the controlled page "report" and all the other pages within the domain.

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As previously described, the preferred SID comprises a compact ASCII string that encodes a user identifier, the current domain, a key identifier, an expiration time, the client IP address, and an unforgeable digital signature. In Step 8, the authentication server redirects the client to the tagged URL, "http://content.com/[SID]/report", to the client. In Step 9, the tagged URL is automatically forwarded by the browser as a GET request to the content server. The content server logs the GET request in the Transaction database 56 by recording the tagged URL, the client IP address, and the current time. In Step 10, the content server, upon validating the SID, transmits the requested controlled page "report" for display on the client browser.

According to one aspect of the present invention, the content server periodically evaluates the record contained in the transaction log 56 to determine the frequency and duration of accesses to the associated content server. The server counts requests to particular pages exclusive of repeated requests from a common client in order to determine the merits of the information on different pages for ratings purposes. By excluding repeated calls, the system avoids distortions by users attempting to "stuff the ballot box."

In one embodiment, the time intervals between repeated requests by a common client are measured to exclude those requests falling within a defined period of time.

Additionally, the server may, at any given time, track access history within a client-server session. Such a history profile informs the service provider about link traversal frequencies and link paths followed by users. This profile is produced by filtering transaction logs from one or more servers to select only transactions involving a particular user ID (UID). Two subsequent entries, A and B, corresponding to requests from a given user in these logs represent a link traversal from document A to document B made by the user in question. This information may be used to identify the most popular links to a specific page and to suggest where to insert new links to provide more direct access. In another embodiment, the access history is evaluated to determine traversed links leading to a purchase of a product made within commercial pages. This information may be used, for example, to charge for advertising based on the number of link traversals from an advertising page to a product page or based on the count of purchases resulting from a path including the advertisement. In this embodiment, the server can gauge the effectiveness of advertising by measuring the number of sales that resulted from a particular page, link, or path of links. The system can be configured to charge the merchant for an advertising page based on the number of sales that resulted from that page.

According to another aspect of the present invention, a secondary server, such as the authentication server 200 in FIG. 2B, may access a prearranged user profile from the account database 216 and include information based on such a profile in the user identifier field of the SID. In a preferred embodiment, the content server may use such an SID to customize user requested pages to include personalized content based on the user identifier field of the SID.

In another aspect of the invention, the user may gain access to domain of servers containing journals or publications through a subscription. In such a situation, the user may purchase the subscription in advance to gain access to on-line documents through the Internet. The user gains access to a subscribed document over the Internet through the authorization procedure as described above where an authorization indicator is preferably embedded in a session identifier. In another embodiment, rather than relying on a

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prepaid subscription, a user may be charged and billed each time he or she accesses a particular document through the Internet. In that case, authorization may not be required so long as the user is fully identified in order to be charged for the service. The user identification is most appropriately embedded in the session identifier described above.

In another aspect of the invention, facilities are provided to allow users to utilize conventional telephone numbers or other identifiers to access merchant services. These merchant services can optionally be protected using SIDs. In a preferred embodiment, as shown in FIG. 6, a Web browser client 601 provides a "dial" command to accept a telephone number from a user, as by clicking on a "dial" icon and inputting the telephone number through the keyboard. The browser then constructs a URL of the form "http://directory.net/NUMBER", where NUMBER is the telephone number or other identifier specified by the user. The browser then performs a GET of the document specified by this URL, and contacts directory server 602, sending the NUMBER requested in Message 1.

In another embodiment, implemented with a conventional browser, client 601 uses a form page provided by directory server 601 that prompts for a telephone number or other identifier in place of a "dial" command, and Message 1 is a POST message to a URL specified by this form page.

Once NUMBER is received by directory server 601, the directory server uses database 604 to translate the NUMBER to a target URL that describes the merchant server and document that implements the service corresponding to NUMBER. This translation can ignore the punctuation of the number, therefore embedded parenthesis or dashes are not significant.

In another embodiment an identifier other than a number may be provided. For example, a user may enter a company name or product name without exact spelling. In such a case a "soundex" or other phonetic mapping can be used to permit words that sound alike to map to the same target URL. Multiple identifiers can also be used, such as a telephone number in conjunction with a product name or extension.

In Message 2, Directory server 602 sends a REDIRECT to client 601, specifying the target URL for NUMBER as computed from database 604. The client browser 601 then automatically sends Message 3 to GET the contents of this URL. Merchant server 603 returns this information in Message 4. The server 602 might have returned a Web page to the client to provide an appropriate link to the required document. However, because server 602 makes a translation to a final URL and sends a REDIRECT rather than a page to client 601, the document of message 4 is obtained without any user action beyond the initial dial input.

The Target URL contained in Message 3 can be an ordinary URL to an uncontrolled page, or it can be a URL that describes a controlled page. If the Target URL describes a controlled page then authentication is performed as previously described. The Target URL can also describe a URL that includes an SID that provides a preauthorized means of accessing a controlled page.

Among benefits of the "dial" command and its implementation is an improved way of accessing the Internet that is compatible with conventional telephone numbers and other identifiers. Merchants do not need to alter their print or television advertising to provide an Internet specific form of contact information, and users do not need to learn about URLs.

In the approach a single merchant server can provide multiple services that correspond to different external "tele-

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phone numbers" or other identifiers. For example, if users dial the "flight arrival" number they could be directed to the URL for the arrival page, while, if they dial the "reservations" number, they would be directed to the URL for the reservations page. A "priority gold" number could be directed to a controlled page URL that would first authenticate the user as belonging to the gold users group, and then would provide access to the "priority gold" page. An unpublished "ambassador" number could be directed to a tagged URL that permits access to the "priority gold" page without user authentication.

This invention has particular application to network sales systems such as presented in U.S. patent application Ser. No. 08/328,133, filed Oct. 24, 1994, by Payne et al. which is incorporated herein by reference.

EQUIVALENTS

Those skilled in the art will know, or be able to ascertain using no more than routine experimentation, many equivalents to the specific embodiments or the invention described herein. These and all other equivalents are intended to be encompassed by the following claims.

What is claimed is:

1. A method of processing service requests from a client to a server system through a network, said method comprising the steps of forwarding a service request from the client to the server system, wherein communications between the client and server system are according to hypertext transfer protocol;

returning a session identifier from the server system to the client, the client storing the session identifier for use in subsequent distinct requests to the server system; and appending the stored session identifier to each of the subsequent distinct requests from the client to the server system.

2. A method as claimed in claim 1 wherein the session identifier includes a user identifier.

3. A method as claimed in claim 1 wherein the session identifier includes an expiration time for the session.

4. A method as claimed in claim 1 wherein the server system records information from the session identifier in a transaction log in the server system.

5. A method as claimed in claim 4 wherein the server system tracks the access history of sequences of service requests within a session of requests.

6. A method as claimed in claim 5 wherein the server system tracks the access history to determine service requests leading to a purchase made within the session of requests.

7. A method as claimed in claim 4 wherein the server system counts requests to particular services exclusive of repeated requests from a common client.

8. A method as claimed in claim 4 wherein the server system maintains a data base relating customer information to access patterns.

9. A method as claimed in claim 8 wherein the information includes customer demographics.

10. A method as claimed in claim 1 wherein the server system assigns the session identifier to an initial service request to the server system.

11. A method as claimed in claim 1 wherein the server system subjects the client to an authorization routine prior to issuing the session identifier and the session identifier is protected from forgery.

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12. A method as claimed in claim 1 wherein the server system comprises plural servers including an authentication server which provides session identifiers for service requests to multiple servers.

13. A method as claimed in claim 12 wherein:

a client directs a service request to a first server which is to provide the requested service;

the first server checks the service request for a session identifier and only services a service request having a valid session identifier, and where the service request has no valid identifier;

the first server returns a response to the client, the response redirecting the service request from the client to the authentication server;

the authentication server subjects the client to an authorization routine and issues the session identifier to be appended to the service request to the first server;

the client forwards the service request appended with the session identifier to the first server; and

the first server recognizes the session identifier and services the service request to the client; and

the client appends the session identifier to subsequent service requests to the server system and is serviced without further authorization.

14. A method as claimed in claim 13 wherein the session identifier includes a user identifier.

15. A method as claimed in claim 13 wherein the session identifier includes an expiration time for the session.

16. A method as claimed in claim 13 wherein the session identifier provides access to a protected domain to which the session has access authorization.

17. A method as claimed in claim 16 wherein the session identifier is modified for access to a different protected domain.

18. A method as claimed in claim 13 wherein the session identifier provides a key identifier for key management.

19. A method as claimed in claim 13 wherein the server system records information from the session identifier in a transaction log in the server system.

20. The method of claim 1 wherein the access rights of the client are fully contained within the session identifier.

21. A method as claimed in claim 1 wherein a service request is for a document and the session identifier includes a user identification, further comprising:

returning the requested document wherein the document is customized for a particular user based on the user identification of the session identifier.

22. A method as claimed in claim 1 wherein a service request is for a document which has been purchased by a user, the session identifier comprises an authorization identifier, and further comprising:

returning the requested document if the authorization identifier indicates that the user is authorized to access the document.

23. A method as claimed in claim 1 wherein a service request is for a document wherein the session identifier comprises a user identifier, and further comprising:

returning the requested document to the client; and charging the user identified in the identifier for access to the document.

24. The method of claim 1, wherein at least one service request comprises a request for a document which has been purchased by a user, and wherein the session identifier comprises an authorization identifier, the method further comprising:

returning the requested document if the authorization identifier indicates that the user is authorized to access the document.

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25. A method as claimed in claim 24, wherein the authorization identifier is encoded within a session identifier which is appended to the request.

26. The method of claim 24 wherein the authorization identifier is provided by authentication server.

27. The method of claim 24, further comprising: identifying the user from the authorization identifier; and automatically charging the identified user for the document.

28. The method of claim 24, wherein the document is returned electronically.

29. The method of claim 24, wherein a physical copy of the document is sent.

30. The method of claim 24, wherein the authorization identifier is appended to uniform resource locator.

31. The method of claim 1, wherein at least one service request comprises a request for a document, wherein the session identifier is designated by the server system, said method further comprising the steps of:

returning the requested document to the client; and charging the user identified in the session identifier for access to the document.

32. A method as claimed in claim 31, wherein a user identifier is encoded within a session identifier which is appended to the request.

33. The method of claim 1 wherein the session identifier is cryptographically generated.

34. The method of claim 1 further comprising: returning a response to the client, the response redirecting an initial service request to an authentication server, the authentication server providing the session identifier.

35. The method of claim 1, wherein the session identifier is appended to at least one path name in a document returned by the server system.

36. The method of claim 35, wherein the at least one path name is in a link in the returned document.

37. The method of claim 36 wherein the link is an absolute link.

38. The method of claim 36 wherein the link comprises a uniform resource locator.

39. The method of claim 35 wherein the step of appending the session identifier comprises filtering the requested document.

40. The method of claim 35 wherein the session identifier is cryptographically generated.

41. The method of claim 35 wherein the session identifier is directed to an accessible domain.

42. The method of claim 35 wherein the session identifier comprises an expiration time.

43. The method of claim 35 wherein the session identifier comprises a date.

44. The method of claim 35 wherein the session identifier comprises a key identifier.

45. The method of claim 35 wherein the session identifier comprises an address of the client.

46. The method of claim 35 wherein the session identifier comprises a digital signature.

47. The method of claim 1, wherein the session identifier is designated by the server system, further comprising the steps of:

validating, at the server system, the appended session identifier; and

returning a controlled document if the appended session identifier is valid.

48. The method of claim 47 wherein the session identifier is cryptographically generated.

49. The method of claim 47 wherein the session identifier is directed to an accessible domain.

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50. The method of claim 47 wherein the session identifier comprises an expiration time.

51. The method of claim 47 wherein the session identifier comprises a date.

52. The method of claim 47 wherein the session identifier comprises a key identifier.

53. The method of claim 47 wherein the session identifier comprises an address of the client.

54. The method of claim 47 wherein the session identifier comprises an unforgeable digital signature.

55. The method of claim 47 wherein the session identifier facilitates authenticated accesses across multiple content servers.

56. The method of claim 47 wherein the document is customized for a particular user based on a user identification of the session identifier.

57. The method of claim 47, wherein the session identifier is appended to at least one path name in a document returned by the server system.

58. The method of claim 57 wherein the step of appending the session identifier comprises filtering the requested document.

59. The method of claim 1, further comprising:

servicing a request; and
automatically charging a user identified by the session identifier for the service provided.

60. The method of claim 1, wherein at least one service request comprises a purchase request, the purchase request including an associated user identifier, the method further comprising:

accessing, upon receipt of the purchase request at the server system, user information associated with the user identifier sufficient to charge to an account associated with the user, the purchase price of the product identified by the purchase request;
charging the user for the product identified by the purchase request according to the user information; and
fulfilling the purchase request based on the user information.

61. The method of claim 60, wherein the client includes the user identifier in a session identifier appended to the purchase request.

62. The method of claim 1, further comprising:

under control of a client system, displaying information identifying a product; and

in response to a user selection of a hyperlink associated with a product desired to be purchased, sending a request to purchase the item along with an identifier of a purchaser of the item to a server system; and
under control of the server system, upon receiving the request, retrieving additional information previously stored for the purchaser identified by the identifier in the received request;

charging the user the purchase price of the product; and
fulfilling the request for the product.

63. The method of claim 1, wherein the session identifier is appended by the client.

64. The method of claim 63, wherein the session identifier is cryptographically generated.

65. The method of claim 1, wherein a service request comprises a request to purchase a product.

66. The method of claim 65, wherein the product is transmitted over the network.

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67. The method of claim 66, wherein the product is a newspaper/newsletter article.

68. The method of claim 65, wherein the product is a durable product.

69. An information system on a network, comprising:

means for receiving service requests from a client and for determining whether a service request includes a session identifier, wherein communications to and from the client are according to hypertext transfer protocol;
means for providing the session identifier in response to an initial service request from the client in a session of requests;

means for storing, at the client, the session identifier for use in each communication to the server system;

means for appending the stored session identifier to each of subsequent communications from the client to the server system; and

means for servicing the subsequent service requests.

70. The information system of claim 69 wherein access rights of the client are fully contained within the session identifier.

71. An information system as claimed in claim 69 wherein the means for providing the session identifier is in a server system which services the requests.

72. An information system as claimed in claim 69 further comprising an authorization routine for authorizing the client prior to issuing the session identifier and means for protecting the session identifier from forgery.

73. An information server system as claimed in claim 69 further comprising a transaction log for recording information from the session identifier.

74. An information system as claimed in claim 69 further comprising means for tracking access history of sequences of service requests within the session of requests.

75. An information system as claimed in claim 69 further comprising means for counting requests to particular services exclusive of repeated requests from a common client.

76. An information system as claimed in claim 69 further comprising a data base relating customer information to access patterns.

77. An information system as claimed in claim 76 wherein the information includes customer demographics.

78. A method of processing, in a server system, service requests from a client to the server system through a network, said method comprising the steps of:

receiving, from the client, a service request to which a session identifier stored at the client has been appended by the client, wherein communications between the client and server system are according to hypertext transfer protocol;
validating the session identifier appended to the service request; and
servicing the service request if the appended session identifier is valid.

79. The method of claim 78, further comprising, in the server system:

receiving an initial service request from the client;
creating, responsive to the initial service request, the session identifier; and
returning the session identifier to the client for storage by the client for use in subsequent distinct requests to the server system.

* * * * *

APPEAL, PATENT, PATENT/TRADEMARK, PROTECTIVE-ORDER
U.S. District Court [LIVE]
Eastern District of TEXAS (Tyler)
CIVIL DOCKET FOR CASE #: 6:07-cv-00511-LED

Soverain Software LLC v. CDW Corporation et al
Assigned to: Judge Leonard Davis
Cause: 35:271 Patent Infringement

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Defendant

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Defendant

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TERMINATED: 05/26/2009

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Tiger Direct Inc
TERMINATED: 05/26/2009

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Counter Claimant

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Date Filed	#	Docket Text
11/02/2007	<u>1</u>	COMPLAINT against CDW Corporation, Newegg Inc., Redcats USA, Inc., Systemax Inc., Zappos.Com, Inc. (Filing fee \$ 350.00 pd. 6-1-11611) , filed by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u> Exhibit E# <u>6</u> Civil Cover Sheet)(mjc) (Entered: 11/06/2007)
11/02/2007	<u>2</u>	DEMAND for Trial by Jury by Sovereign Software LLC. (mjc) (Entered: 11/06/2007)
11/02/2007	<u>3</u>	Report on the Filing or Determination of an Action Regarding A Patent or Trademark. (Copy forwarded to the Director of the U.S. Patent and Trademark Office.) (mjc) (Entered: 11/06/2007)
11/02/2007	<u>4</u>	CORPORATE DISCLOSURE STATEMENT filed by Sovereign Software LLC identifying no Corporate Parent. (mjc) (Entered: 11/06/2007)
11/02/2007	<u>5</u>	E-GOV SEALED SUMMONS Issued as to CDW Corporation, Newegg Inc., Redcats USA, Inc., Systemax Inc., Zappos.Com, Inc. (Attachments: # <u>1</u> CDW Corporation/Illinois Corp. Service Co. Summons# <u>2</u> Newegg, Inc. Summons# <u>3</u> Newegg, Inc. via Corp. Service Co. Summons# <u>4</u> Zappos.com, Inc. Summons# <u>5</u> Zappos.com, Inc. via Incorporating Svs., Ltd. Summons# <u>6</u> Systemax, Inc. via Corp. Service Co. Summons# <u>7</u> Systemax Inc., Summons# <u>8</u> Redcats USA, Inc. Summons# <u>9</u> Redcats USA, Inc. via The Corp. Trust Co. Summons)(mjc) (Entered: 11/06/2007)
11/19/2007	<u>6</u>	Return of Service Executed as to Zappos.Com, Inc. on 11/7/2007, answer due: 11/27/2007. (mjc) (Entered: 11/19/2007)
11/19/2007	<u>7</u>	Return of Service Executed as to Systemax Inc. on 11/6/2007, answer due: 11/26/2007. (mjc) (Entered: 11/19/2007)
11/19/2007	<u>8</u>	Return of Service Executed as to Redcats USA, Inc. on 11/6/2007, answer due: 11/26/2007. (mjc) (Entered: 11/19/2007)
11/19/2007	<u>9</u>	Return of Service Executed as to Newegg Inc. on 11/6/2007, answer due: 11/26/2007. (mjc) (Entered: 11/19/2007)
11/19/2007	<u>10</u>	Return of Service Executed as to CDW Corporation on 11/6/2007, answer due: 11/26/2007. (mjc) (Entered: 11/19/2007)
11/21/2007	<u>11</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by Systemax Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Buether, Eric) (Entered: 11/21/2007)
11/21/2007	<u>12</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint, [Unopposed] by Redcats USA, Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Jones, Michael) (Entered: 11/21/2007)
11/23/2007	<u>13</u>	AMENDED COMPLAINT FOR PATENT INFRINGEMENT against all defendants, filed by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit Exhibit A# <u>2</u> Exhibit Exhibit B# <u>3</u> Exhibit Exhibit C# <u>4</u> Exhibit Exhibit D# <u>5</u> Exhibit Exhibit E)(Adamo, Kenneth) Modified on 11/27/2007 (rvw,). (SEE DOC # <u>22</u> FOR CERT OF SVC) (Entered: 11/23/2007)
11/23/2007	<u>14</u>	NOTICE of Attorney Appearance by Mark Christopher Howland on behalf of Sovereign Software LLC (Howland, Mark) (Entered: 11/23/2007)
11/23/2007	<u>15</u>	Notice of Filing of Patent/Trademark Form (AO 120). AO 120 mailed to the Director of the U.S. Patent and Trademark Office. (Howland, Mark) (Entered: 11/23/2007)
11/26/2007	<u>16</u>	NOTICE of Attorney Appearance by Thomas L Giannetti on behalf of Sovereign Software LLC (Giannetti, Thomas) (Entered: 11/26/2007)
11/26/2007	<u>17</u>	E-GOV SEALED SUMMONS Issued as to Tiger Direct Inc, The Sportsman's Guide Inc, Redcats USA, Inc.. (rvw,) (Entered: 11/26/2007)

11/26/2007	<u>18</u>	ORDER granting <u>11</u> Motion for Extension of Time to Answer re <u>11</u> MOTION for Extension of Time to File Answer re <u>1</u> Complaint. Systemax Inc.'s answer is due by 12/31/2007. Signed by Judge Leonard Davis on 11/26/07. (mjc) (Entered: 11/26/2007)
11/26/2007		Set/Reset Deadlines: Systemax Inc. answer due 12/31/2007. (mjc) (Entered: 11/26/2007)
11/26/2007	<u>19</u>	ORDER granting <u>12</u> Motion for Extension of Time to Answer re <u>12</u> MOTION for Extension of Time to File Answer re <u>1</u> Complaint, [Unopposed]. Redcats USA, Inc.'s answer is due by 12/31/2007. Signed by Judge Leonard Davis on 11/26/07. (mjc) (Entered: 11/26/2007)
11/26/2007		Set/Reset Deadlines: Redcats USA, Inc. answer due 12/31/2007. (mjc) (Entered: 11/26/2007)
11/26/2007	<u>20</u>	NOTICE of Attorney Appearance by Herbert A Yarbrough, III on behalf of Newegg Inc. (Yarbrough, Herbert) (Entered: 11/26/2007)
11/26/2007	<u>21</u>	MOTION for Extension of Time to File Answer <i>Defendant, Newegg Inc.'s, Unopposed Motion for Extension of Time in Which to Answer or Otherwise Respond to Plaintiff's Complaint</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 11/26/2007)
11/26/2007	<u>22</u>	NOTICE by Sovereign Software LLC of Service (Howland, Mark) (Entered: 11/26/2007)
11/27/2007	<u>23</u>	ORDER granting <u>21</u> Motion for Extension of Time to Answer re <u>21</u> MOTION for Extension of Time to File Answer <i>Defendant, Newegg Inc.'s, Unopposed Motion for Extension of Time in Which to Answer or Otherwise Respond to Plaintiff's Complaint</i> . Newegg's answer is due by 12/31/2007. Signed by Judge Leonard Davis on 11/27/07. (mjc) (Entered: 11/27/2007)
11/27/2007		Set/Reset Deadlines: Newegg Inc. answer due 12/31/2007. (mjc) (Entered: 11/27/2007)
11/28/2007	<u>24</u>	APPLICATION to Appear Pro Hac Vice by Attorney Michael A Nicodema for Systemax Inc. Fee pd., 6-1-11903. Approved 11/29/07. (mjc) (Entered: 11/29/2007)
11/28/2007	<u>25</u>	APPLICATION to Appear Pro Hac Vice by Attorney Barry J Schindler for Systemax Inc. Fee pd., 6-1-11903. Approved 11/29/07. (mjc) (Entered: 11/29/2007)
11/28/2007	<u>26</u>	APPLICATION to Appear Pro Hac Vice by Attorney Gaston Kroub for Systemax Inc. Fee pd., 6-1-11903. Approved 11/29/07. (mjc) (Entered: 11/29/2007)
12/03/2007	<u>27</u>	APPLICATION to Appear Pro Hac Vice by Attorney Barry R Satine for Sovereign Software LLC. Fee pd., 6-1-11943. Approved 12/4/07. (mjc) (Entered: 12/04/2007)
12/06/2007	<u>28</u>	Consent MOTION for Extension of Time to File Answer or Otherwise Respond to Plaintiff's Complaint for Patent Infringement by Zappos.Com, Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Herhold, Theodore) (Entered: 12/06/2007)
12/07/2007	<u>29</u>	MOTION for Extension of Time to File Answer re <u>13</u> Amended Complaint, [Unopposed] by Redcats USA LP, The Sportsman's Guide Inc. (Attachments: # <u>1</u> Text of Proposed Order)(Jones, Michael) (Entered: 12/07/2007)
12/07/2007	<u>30</u>	ORDER granting <u>28</u> Motion for Extension of Time to Answer re <u>28</u> Consent MOTION for Extension of Time to File Answer or Otherwise Respond to Plaintiff's Complaint for Patent Infringement. Defendant Zappos.com, Inc.'s answer is due by 12/31/07. Signed by Judge Leonard Davis on 12/7/07. (mjc) (Entered: 12/07/2007)
12/07/2007		Set/Reset Deadlines: Zappos.Com, Inc. answer due 12/31/2007. (mjc) (Entered: 12/07/2007)

12/07/2007	<u>31</u>	MOTION for Extension of Time to File Answer re <u>13</u> Amended Complaint, <i>Unopposed Motion to Extend Time to Answer, Move or Otherwise Respond to the Amended Complaint of Plaintiff</i> by CDW Corporation. (Attachments: # <u>1</u> Text of Proposed Order)(Findlay, Eric) (Entered: 12/07/2007)
12/10/2007	<u>32</u>	ORDER granting <u>29</u> Motion for Extension of Time to Answer re <u>29</u> MOTION for Extension of Time to File Answer re <u>13</u> Amended Complaint, <i>[Unopposed]</i> . Defendants Redcats USA, L.P. and The Sportsman's Guide's answers are due by 12/31/07. Signed by Judge Leonard Davis on 12/10/07. (mjc) (Entered: 12/10/2007)
12/10/2007		Set/Reset Deadlines: The Sportsman's Guide Inc answer due 12/31/2007; Redcats USA LP answer due 12/31/2007. (mjc) (Entered: 12/10/2007)
12/10/2007	<u>33</u>	ORDER granting <u>31</u> Motion for Extension of Time to Answer re <u>31</u> MOTION for Extension of Time to File Answer re <u>13</u> Amended Complaint, <i>Unopposed Motion to Extend Time to Answer, Move or Otherwise Respond to the Amended Complaint of Plaintiff</i> MOTION for Extension of Time to File Answer re <u>13</u> Amended Complaint, <i>Unopposed Motion to Extend Time to Answer, Move or Otherwise Respond to the Amended Complaint of Plaintiff</i> . CDW Corporation's answer is due 12/31/07. Signed by Judge Leonard Davis on 12/10/07. (mjc) (Entered: 12/10/2007)
12/10/2007		Set/Reset Deadlines: CDW Corporation answer due 12/31/2007. (mjc) (Entered: 12/10/2007)
12/10/2007	<u>34</u>	NOTICE of Attorney Appearance by Mary-Olga Lovett on behalf of Systemax Inc. (Lovett, Mary-Olga) (Entered: 12/10/2007)
12/10/2007	<u>35</u>	NOTICE of Attorney Appearance by Mary-Olga Lovett on behalf of Tiger Direct Inc (Lovett, Mary-Olga) (Entered: 12/10/2007)
12/10/2007	<u>36</u>	MOTION for Extension of Time to File <i>Unopposed Motion for Enlargement of Time in Which to Answer or Otherwise Respond</i> by Systemax Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Lovett, Mary-Olga) (Entered: 12/10/2007)
12/10/2007	<u>37</u>	MOTION for Extension of Time to File <i>Unopposed Motion for Enlargement of Tme in Which to Answer or Otherwise Respond</i> by Tiger Direct Inc. (Attachments: # <u>1</u> Text of Proposed Order)(Lovett, Mary-Olga) (Entered: 12/10/2007)
12/10/2007	<u>38</u>	APPLICATION to Appear Pro Hac Vice by Attorney Jennifer Seraphine for Sovereign Software LLC. (mll,) (Entered: 12/11/2007)
12/10/2007	<u>41</u>	Return of Service Executed as to Tiger Direct Inc on 11/28/2007, by personal service; answer due: 12/18/2007. (mll,) (Entered: 12/11/2007)
12/10/2007	<u>42</u>	Return of Service Executed as to The Sportsman's Guide Inc on 11/28/2007, by personal service; answer due: 12/18/2007. (mll,) (Entered: 12/11/2007)
12/10/2007	<u>43</u>	Return of Service Executed as to Redcats USA LP on 11/29/2007, by personal service on The Corporation Trust Company; answer due: 12/19/2007. (mll,) (Entered: 12/11/2007)
12/10/2007	<u>44</u>	Return of Service Executed as to Redcats USA LP on 11/28/2007, by personal service on CT Corporation System, Houston, Texas; answer due: 12/18/2007. (mll,) (Entered: 12/11/2007)
12/11/2007	<u>39</u>	ORDER granting <u>36</u> Motion for Extension of Time to File. Accordingly, IT IS ORDERED, that Systemax Inc time to answer or otherwise respond in any manner to Plaintiff's Amended Complaint is extended to December 31, 2007. Signed by Judge Leonard Davis on 12/11/07. (fnt,) (Entered: 12/11/2007)
12/11/2007		Answer Due Deadline Updated for Systemax Inc 12/31/2007 (fnt,) (Entered: 12/11/2007)
12/11/2007	<u>40</u>	ORDER granting <u>37</u> Motion for Extension of Time to File. Accordingly, IT IS ORDERED, that Tiger Direct, Inc.'s time to answer or otherwise respond in any manner to Plaintiff's Amended Complaint is extended to December 31, 2007. Signed by Judge Leonard Davis on 12/11/07. (fnt,) (Entered: 12/11/2007)

12/11/2007	<u>45</u>	APPLICATION to Appear Pro Hac Vice by Attorney Steven Gardner for The Sportsman's Guide Inc and Redcats USA, Inc. (mll,) (Entered: 12/12/2007)
12/11/2007	<u>46</u>	APPLICATION to Appear Pro Hac Vice by Attorney Frank W Leak, Jr for The Sportsman's Guide Inc and Redcats USA, Inc. (mll,) (Entered: 12/12/2007)
12/11/2007	<u>47</u>	APPLICATION to Appear Pro Hac Vice by Attorney Tonya R Deem for The Sportsman's Guide Inc and Redcats USA, Inc. (mll,) (Entered: 12/12/2007)
12/11/2007		Pro Hac Vice Filing fee paid by Steven Gardner, Frank Leak, and Tonya Deem; Fee: \$75, receipt number: 6-1-12070 (mll,) (Entered: 12/12/2007)
12/12/2007	<u>48</u>	NOTICE of Attorney Appearance by Sidney Calvin Capshaw, III on behalf of Zappos.Com, Inc. (Capshaw, Sidney) (Entered: 12/12/2007)
12/12/2007	<u>49</u>	NOTICE of Attorney Appearance by Mary-Olga Lovett on behalf of Tiger Direct Inc (Lovett, Mary-Olga) Modified on 12/13/2007 (djh,). Modified on 12/13/2007 (djh,). Additional attachment(s) added on 12/13/2007 (djh,). (Entered: 12/12/2007)
12/12/2007	<u>50</u>	NOTICE of Attorney Appearance by Mary-Olga Lovett on behalf of Tiger Direct Inc (Lovett, Mary-Olga) Modified on 12/13/2007 (djh,). Modified on 12/13/2007 (djh,). Additional attachment(s) added on 12/13/2007 (djh,). (Entered: 12/12/2007)
12/12/2007	<u>51</u>	NOTICE of Attorney Appearance by Mary-Olga Lovett on behalf of Tiger Direct Inc (Lovett, Mary-Olga) Modified on 12/13/2007 (djh,). Modified on 12/13/2007 (djh,). Additional attachment(s) added on 12/13/2007 (djh,). (Entered: 12/12/2007)
12/21/2007	<u>52</u>	STIPULATION of Dismissal <i>without Prejudice as to Defendant Redcats USA, Inc.</i> by Sovereign Software LLC. (Giannetti, Thomas) Additional attachment(s) added on 12/27/2007 (rvw,). (Entered: 12/21/2007)
12/21/2007	<u>53</u>	APPLICATION to Appear Pro Hac Vice by Attorney Thomas L Duston for CDW Corporation. (mll,) (Entered: 12/26/2007)
12/21/2007	<u>54</u>	APPLICATION to Appear Pro Hac Vice by Attorney Charles Edward Juister for CDW Corporation. (mll,) (Entered: 12/26/2007)
12/21/2007	<u>55</u>	APPLICATION to Appear Pro Hac Vice by Attorney Scott A Sanderson for CDW Corporation. (mll,) (Entered: 12/26/2007)
12/28/2007	<u>56</u>	ORDER re <u>52</u> Stipulation of Dismissal filed by Sovereign Software LLC, dismissing without prejudice Defendant Redcats USA, Inc. Each party shall bear its own costs. Signed by Judge Leonard Davis on 12/28/07. (mjc) (Entered: 12/28/2007)
12/28/2007	<u>57</u>	ANSWER to Amended Complaint, COUNTERCLAIM against Sovereign Software LLC by Tiger Direct Inc.(Lovett, Mary-Olga) (Entered: 12/28/2007)
12/28/2007	<u>58</u>	ANSWER to Amended Complaint, COUNTERCLAIM against Sovereign Software LLC by Systemax Inc..(Lovett, Mary-Olga) (Entered: 12/28/2007)
12/28/2007	<u>59</u>	MOTION to Withdraw as Attorney (<i>Defendant Zappos.com, Inc.'s Unopposed Motion for Withdrawal of S. Calvin Capshaw and the law firm of Brown McCarroll, LLP as Counsel</i>) by Zappos.Com, Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Capshaw, Sidney) (Entered: 12/28/2007)
12/31/2007	<u>60</u>	ANSWER to Amended Complaint , <i>Affirmative Defenses</i> , COUNTERCLAIM against Sovereign Software LLC by CDW Corporation, Newegg Inc., Zappos.Com, Inc..(Findlay, Eric) (Entered: 12/31/2007)
12/31/2007	<u>61</u>	CORPORATE DISCLOSURE STATEMENT filed by Newegg Inc. identifying None as Corporate Parent. (Findlay, Eric) (Entered: 12/31/2007)
12/31/2007	<u>62</u>	CORPORATE DISCLOSURE STATEMENT filed by CDW Corporation identifying VH Holdings, Inc. as Corporate Parent. (Findlay, Eric) (Entered: 12/31/2007)

12/31/2007	<u>63</u>	CORPORATE DISCLOSURE STATEMENT filed by Zappos.Com, Inc. identifying Zappos.com, Inc. as Corporate Parent. (Findlay, Eric) (Entered: 12/31/2007)
12/31/2007	<u>64</u>	ANSWER to Amended Complaint <i>and</i> , COUNTERCLAIM against Sovereign Software LLC by The Sportsman's Guide Inc, Redcats USA LP.(Jones, Michael) (Entered: 12/31/2007)
01/02/2008	<u>65</u>	MOTION to Withdraw as Attorney by Systemax Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Buether, Eric) (Entered: 01/02/2008)
01/02/2008	<u>66</u>	ORDER granting <u>59</u> Motion to Withdraw as Attorney. Attorney Sidney Calvin Capshaw, III terminated as to deft Zappos.com Inc. Signed by Judge Leonard Davis on 01/02/08. cc:attys 1-2-08 (mll,) (Entered: 01/02/2008)
01/02/2008	<u>67</u>	MOTION to Withdraw as Attorney (<i>Defendant Zappos.com, Inc.'s Unopposed Motion for Withdrawal of Theodore T. Herhold and the law firm of Townsend and Townsend and Crew LLP as Counsel</i>) by Zappos.Com, Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Herhold, Theodore) (Entered: 01/02/2008)
01/03/2008	<u>68</u>	ORDER granting <u>65</u> Motion to Withdraw as Attorney. Attorney Eric William Buether terminated. Signed by Judge Leonard Davis on 1/3/08. (fnt,) (Entered: 01/03/2008)
01/03/2008	<u>69</u>	ORDER granting <u>67</u> Motion to Withdraw as Attorney. Attorney Theodore Herhold terminated. Signed by Judge Leonard Davis on 1/3/08. (fnt,) (Entered: 01/03/2008)
01/07/2008	<u>70</u>	CORPORATE DISCLOSURE STATEMENT filed by Redcats USA LP identifying VLP Corporation, Chadwick's of Boston, Inc., Redcats USA, Inc., Redcats USA, LLC, Redcats UK, Plc, Redcats, S.A. and PPR, S.A. as Corporate Parent. (Jones, Michael) (Entered: 01/07/2008)
01/07/2008	<u>71</u>	CORPORATE DISCLOSURE STATEMENT filed by The Sportsman's Guide Inc identifying VLP Corporation, Redcats USA, Inc., Redcats USA, LLC, Redcats UK, Plc, Redcats, S.A. and PPR, S.A. as Corporate Parent. (Jones, Michael) (Entered: 01/07/2008)
01/10/2008	<u>72</u>	ORDER – Status Conference set for 2/4/2008 01:30 PM before Judge Leonard Davis and Magistrate Judge John D. Love in Judge Davis' courtroom in Tyler to set a claim construction hearing date and a trial setting and to determine whether parties will consent to trial before Judge Love. Proposed Discovery Order is Appendix A; Proposed Docket Control Order is Appendix B. Agreed docket control and discovery orders are due 14 days after the status conference, and Plaintiff's PR 3-1 and 3-2 disclosures are due four days after the status conference. Signed by Judge Leonard Davis on 1/10/08. (mjc) (Entered: 01/10/2008)
01/17/2008	<u>73</u>	RESPONSE to <u>58</u> Answer to Amended Complaint, Counterclaim <i>Sovereign's Reply to Counterclaims of Systemax</i> by Sovereign Software LLC. (Giannetti, Thomas) (Entered: 01/17/2008)
01/17/2008	<u>74</u>	RESPONSE to <u>57</u> Answer to Amended Complaint, Counterclaim <i>Sovereign's Reply to Counterclaims of TigerDirect</i> by Sovereign Software LLC. (Giannetti, Thomas) (Entered: 01/17/2008)
01/17/2008	<u>75</u>	RESPONSE to <u>60</u> Answer to Amended Complaint, Counterclaim <i>Sovereign's Reply to Counterclaims of CDW, Newegg and Zappos</i> by Sovereign Software LLC. (Giannetti, Thomas) (Entered: 01/17/2008)
01/17/2008	<u>76</u>	RESPONSE to <u>64</u> Answer to Amended Complaint, Counterclaim <i>Sovereign's Reply to Counterclaims of Redcats and The Sportsman's Guide</i> by Sovereign Software LLC. (Giannetti, Thomas) (Entered: 01/17/2008)
01/18/2008	<u>77</u>	APPLICATION to Appear Pro Hac Vice by Attorney Lynda Q Nguyen for Sovereign Software LLC. Fee pd., 6-1-12491. Approved 1/23/08. (mjc) (Entered: 01/23/2008)
01/29/2008	<u>78</u>	NOTICE of <i>Defendant Systemax Inc.'s Corporate Disclosure Statement</i> by Systemax Inc. (Lovett, Mary-Olga) Modified on 1/30/2008 (mjc). (Entered: 01/29/2008)

01/29/2008	<u>79</u>	NOTICE of <i>Defendant TigerDirect, Inc.'s Corporate Disclosure Statement</i> by Tiger Direct Inc. (Lovett, Mary-Olga) Modified on 1/30/2008 (mjc). (Entered: 01/29/2008)
02/01/2008	<u>80</u>	APPLICATION to Appear Pro Hac Vice by Attorney William H Boice for The Sportsman's Guide Inc and Redcats USA LP. Fee pd., 6-1-12616. Approved 2/4/08. (mjc) (Entered: 02/04/2008)
02/04/2008	<u>81</u>	Minute Entry for proceedings held before Judge Leonard Davis and Judge John Love : Status Conference held on 2/4/2008. (Court Reporter Shea Sloan.) (Attachments: # <u>1</u> Attorney Sign-In Sheet) (rlf,) (Entered: 02/05/2008)
02/04/2008	<u>82</u>	APPLICATION to Appear Pro Hac Vice by Attorney Andrey Belenky for Sovereign Software LLC. Fee pd., 6-1-12648. Approved 2/5/08. (mjc) (Entered: 02/05/2008)
02/04/2008		E-Minute Entry for proceedings held before Judge Leonard Davis and Judge John D. Love : Status Conference held on 2/4/2008. See Doc # <u>81</u> . (Court Reporter Shea Sloan.) (rlf,) (Entered: 02/05/2008)
02/06/2008	<u>83</u>	ORDER re <u>81</u> Status Conference – Final Pretrial Conference set for 1/21/2010 09:00 AM before Judge Leonard Davis. Jury Selection set for 2/1/2010 09:00AM before Judge Leonard Davis. Jury Trial set for 2/8/2010 09:00 AM before Judge Leonard Davis. Markman Hearing set for 5/28/2009 09:30 AM before Judge Leonard Davis. Parties are to submit agreed Docket Control and Discovery Orders by 2/19/2008. Signed by Judge Leonard Davis on 2/5/08. (mjc) (Entered: 02/06/2008)
02/11/2008	<u>84</u>	NOTICE of Disclosure by Sovereign Software LLC of <i>Asserted Claims and Infringement Contentions</i> (Giannetti, Thomas) (Entered: 02/11/2008)
02/11/2008	<u>85</u>	APPLICATION to Appear Pro Hac Vice by Attorney Kenneth Canfield for Sovereign Software LLC. Fee pd., 6-1-12724. Approved 2/12/08. (mjc) (Entered: 02/12/2008)
02/19/2008	<u>86</u>	NOTICE by CDW Corporation <i>Agreed Notice of Compliance Regarding the Court's February 6, 2008 Order</i> (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B)(Findlay, Eric) (Entered: 02/19/2008)
02/25/2008	<u>87</u>	SCHEDULING ORDER AND ORDER REFERRING CASE TO MEDIATOR: Final Pretrial Conference set for 1/21/2010 09:00 AM before Judge Leonard Davis. Discovery due by 8/31/2009. Jury Selection set for 2/1/2010 09:00AM before Judge Leonard Davis. ORDER REFERRING CASE to Mediator. Michael Philip Patterson rep by Michael Philip Patterson added as Mediator.Expert Witness List due by 7/21/2009. Identify trial witnesses by 9/14/2009. Jury instructions due by 11/24/2009. Mediation Completion due by 5/14/2008. Proposed Pretrial Order due by 11/24/2009. Jury Trial set for 2/8/2010 09:00 AM before Judge Leonard Davis. Markman Hearing set for 5/28/2009 09:30 AM before Judge Leonard Davis. Signed by Judge Leonard Davis on 2/22/08. (mjc) (Entered: 02/25/2008)
02/25/2008	<u>88</u>	APPLICATION to Appear Pro Hac Vice by Attorney Clark Craddock for Sovereign Software LLC. Fee pd., 6-1-12863. Approved 2/27/08. (mjc) (Entered: 02/27/2008)
02/25/2008	<u>89</u>	APPLICATION to Appear Pro Hac Vice by Attorney Stela Cristina Tipi for Sovereign Software LLC. Fee pd., 6-1-12861. Approved 2/27/08. (mjc) (Entered: 02/27/2008)
02/25/2008	<u>90</u>	APPLICATION to Appear Pro Hac Vice by Attorney Matthew C Nielsen for CDW Corporation. Fee pd., 6-1-12864. Approved 2/27/08. (mjc) (Entered: 02/27/2008)
03/05/2008	<u>91</u>	DISCOVERY ORDER entered in furtherance of the management of the Court's docket under FRCP 16. Signed by Judge Leonard Davis on 3/5/08. (mjc) (Entered: 03/05/2008)
03/11/2008	<u>92</u>	NOTICE of Attorney Appearance by Scott A Sanderson on behalf of Newegg Inc., Zappos.Com, Inc. (Sanderson, Scott) (Entered: 03/11/2008)

03/11/2008	<u>93</u>	NOTICE of Attorney Appearance by Matthew C Nielsen on behalf of Newegg Inc., Zappos.Com, Inc. (Nielsen, Matthew) (Entered: 03/11/2008)
03/11/2008	<u>94</u>	NOTICE of Attorney Appearance by Charles Edward Juister on behalf of Newegg Inc., Zappos.Com, Inc. (Juister, Charles) (Entered: 03/11/2008)
03/11/2008	<u>95</u>	NOTICE of Attorney Appearance by Thomas L Duston on behalf of Newegg Inc., Zappos.Com, Inc. (Duston, Thomas) (Entered: 03/11/2008)
03/20/2008	<u>96</u>	NOTICE by Sovereign Software LLC of Compliance with Paragraph 1 of Discovery Order (Giannetti, Thomas) (Entered: 03/20/2008)
03/20/2008	<u>97</u>	NOTICE of Disclosure by The Sportsman's Guide Inc, Redcats USA LP Regarding Initial Disclosures (Jones, Michael) (Entered: 03/20/2008)
03/20/2008	<u>98</u>	NOTICE of Disclosure by Tiger Direct Inc DEFENDANT TIGERDIRECT, INC.'S NOTICE OF SERVICE OF INITIAL DISCLOSURES PURSUANT TO PARAGRAPH 1 OF FEBRUARY 19, 2008 DISCOVERY ORDER (Lovett, Mary-Olga) (Entered: 03/20/2008)
03/20/2008	<u>99</u>	NOTICE of Disclosure by Systemax Inc. DEFENDANT SYSTEMAX, INC.'S NOTICE OF SERVICE OF INITIAL DISCLOSURES PURSUANT TO PARAGRAPH 1 OF FEBRUARY 19, 2008 DISCOVERY ORDER (Lovett, Mary-Olga) (Entered: 03/20/2008)
03/20/2008	<u>100</u>	NOTICE of Disclosure by CDW Corporation , Newegg, Inc. and Zappos.com, Inc. (Duston, Thomas) (Entered: 03/20/2008)
03/26/2008	<u>101</u>	NOTICE of Attorney Appearance by Carl R Roth on behalf of Sovereign Software LLC (Roth, Carl) (Entered: 03/26/2008)
03/26/2008	<u>102</u>	NOTICE of Attorney Appearance by Amanda Aline Abraham on behalf of Sovereign Software LLC (Abraham, Amanda) (Entered: 03/26/2008)
03/26/2008	<u>103</u>	NOTICE of Attorney Appearance by Brendan Clay Roth on behalf of Sovereign Software LLC (Roth, Brendan) (Entered: 03/26/2008)
03/26/2008	<u>104</u>	NOTICE of Attorney Appearance by Michael Charles Smith on behalf of Sovereign Software LLC (Smith, Michael) (Entered: 03/26/2008)
04/07/2008	<u>105</u>	NOTICE of Attorney Appearance by Douglas Ray McSwane, Jr on behalf of Tiger Direct Inc (McSwane, Douglas) (Entered: 04/07/2008)
04/07/2008	<u>106</u>	NOTICE of Attorney Appearance by Douglas Ray McSwane, Jr on behalf of Systemax Inc. (McSwane, Douglas) (Entered: 04/07/2008)
04/14/2008	<u>107</u>	Return of Service Executed as to The Sportsman's Guide Inc on 12/8/2007, answer due: 12/28/2007. (mjc) (Entered: 04/17/2008)
04/14/2008	<u>108</u>	Return of Service Executed as to Tiger Direct Inc on 12/13/2007, answer due: 1/2/2008. (mjc) (Entered: 04/17/2008)
04/14/2008	<u>109</u>	Return of Service Executed as to Zappos.Com, Inc. on 11/13/2007, answer due: 12/31/2007. (mjc) (Entered: 04/17/2008)
04/14/2008	<u>110</u>	Return of Service Executed as to CDW Corporation on 11/19/2007, answer due: 12/9/2007. (mjc) (Entered: 04/17/2008)
04/14/2008	<u>111</u>	Return of Service Executed as to Newegg Inc. on 11/19/2007, answer due: 12/31/2007. (mjc) (Entered: 04/17/2008)
04/14/2008	<u>112</u>	Return of Service Executed as to Systemax Inc. on 11/15/2007, answer due: 12/5/2007. (mjc) (Entered: 04/17/2008)
05/08/2008	<u>113</u>	NOTICE by Sovereign Software LLC of Compliance with Paragraphs 2(B) and 2(C) of the Discovery Order (Tipi, Stela) (Entered: 05/08/2008)
05/13/2008	<u>114</u>	APPLICATION to Appear Pro Hac Vice by Attorney Julianne Hartzell for CDW Corporation, Zappos.com, Inc. and Newegg Inc. Fee pd., 6-1-13755. Approved 5/15/08.(mjc) (Entered: 05/15/2008)

05/21/2008	<u>115</u>	REPORT of Mediation by Michael Philip Patterson. Mediation result: still negotiating(Patterson, Michael) (Entered: 05/21/2008)
06/09/2008	<u>116</u>	E-GOV SEALED SUMMONS Issued as to Zappos.Com, Inc.. (fnt,) (Entered: 06/10/2008)
06/17/2008	<u>117</u>	REPORT of Mediation by Michael Philip Patterson. Mediation result: Sovereign settled with RedCats(Patterson, Michael) (Entered: 06/17/2008)
06/18/2008	<u>118</u>	Consent MOTION to Amend/Correct <u>86</u> Notice (Other) <i>Docket Control Order</i> by The Sportsman's Guide Inc, Redcats USA LP. (Attachments: # <u>1</u> Text of Proposed Order)(Leak, Frank) (Entered: 06/18/2008)
06/19/2008	<u>119</u>	ORDER granting <u>118</u> Motion to Amend/Correct Docket Control Order to Extend Specific Deadlines. Signed by Judge Leonard Davis on 6/19/08. (mjc) (Entered: 06/19/2008)
06/20/2008	<u>120</u>	MOTION for Extension of Time to Complete Discovery <i>Order to Extend Deadlines</i> by Systemax Inc.. (Attachments: # <u>1</u> ORDER)(Lovett, Mary-Olga) (Entered: 06/20/2008)
06/20/2008	<u>121</u>	RESPONSE to Motion re <u>120</u> MOTION for Extension of Time to Complete Discovery <i>Order to Extend Deadlines filed by Sovereign Software LLC.</i> (Attachments: # <u>1</u> Text of Proposed Order)(Tipi, Stela) (Entered: 06/20/2008)
06/21/2008	<u>122</u>	MOTION to Amend/Correct <u>87</u> Scheduling Order,,, Order Referring Case to Mediator,,, Set Hearings,, by CDW Corporation. (Attachments: # <u>1</u> Exhibit A - Proposed Amended Docket Control Order)(Duston, Thomas) (Entered: 06/21/2008)
06/25/2008	<u>123</u>	ORDER denying as moot <u>120</u> Motion for Extension of Time to Complete Discovery; granting <u>122</u> Motion to Amend/Correct Docket Control Order.. Signed by Judge Leonard Davis on 6/25/08. (mjc) (Entered: 06/25/2008)
06/25/2008	<u>124</u>	SCHEDULING ORDER: Discovery due by 8/31/2009. Expert Witness List due by 7/21/2009. Identify trial witnesses by 9/14/2009, Jury instructions due by 11/24/2009, Mediation Completion due by 5/14/2008. Proposed Findings of Fact due by 11/24/2009, Proposed Pretrial Order due by 11/24/2009. Jury Trial set for 2/8/2010 09:00 AM before Judge Leonard Davis. Final Pretrial Conference set for 1/21/2010 09:00 AM before Judge Leonard Davis. Jury Selection set for 2/1/2010 09:00AM before Judge Leonard Davis. Signed by Judge Leonard Davis on 6/25/08. (mjc) (Entered: 06/25/2008)
07/02/2008	<u>125</u>	STIPULATION of Dismissal <i>between Plaintiff and Defendants Redcats USA, Inc., Redcats USA, L.P. and The Sportsmans Guide, Inc.</i> by Sovereign Software LLC. (Attachments: # <u>1</u> Text of Proposed Order Proposed ORDER OF DISMISSAL WITH PREJUDICE)(Craddock, Clark) (Entered: 07/02/2008)
07/03/2008	<u>126</u>	ANSWER to <u>1</u> Complaint, <i>Affirmative Defenses and</i> , COUNTERCLAIM against Sovereign Software LLC by Zappos.Com, Inc..(Findlay, Eric) (Entered: 07/03/2008)
07/07/2008	<u>127</u>	ORDER OF DISMISSAL WITH PREJUDICE re <u>125</u> Stipulation of Dismissal, filed by Sovereign Software LLC, Redcats USA LP; Redcats USA, Inc.; The Sportsman's Guide Inc; The Sportsman's Guide Inc; The Sportsman's Guide Inc; The Sportsman's Guide Inc; The Sportsman's Guide Inc; Redcats USA LP and Redcats USA LP terminated. Plaintiff's complaint against Licensee is dismissed with prejudice. Licensee's counterclaims are dismissed with prejudice. Each party shall bear its own attorney's fees, expenses and costs. Signed by Judge Leonard Davis on 7/7/08. (mpv,) (Entered: 07/07/2008)
07/08/2008	<u>128</u>	Return of Service Executed as to Zappos.Com, Inc. on 6/16/2007, answer due: 7/6/2007. (gsg) (Entered: 07/09/2008)
07/21/2008	<u>129</u>	<i>TigerDirect Inc.'s Affirmative Defenses</i> , ANSWER to <u>13</u> Amended Complaint, <i>for Patent Infringement</i> , COUNTERCLAIM to Plaintiff's Amended Complaint for <i>Patent Infringement</i> against Sovereign Software LLC by Tiger Direct Inc.(Lovett, Mary-Olga) (Entered: 07/21/2008)

07/21/2008	<u>130</u>	<i>Systemax Inc.'s Affirmative Defenses ANSWER to <u>1</u> Complaint,, COUNTERCLAIM to Plaintiff's Amended Complaint for Patent Infringement against Systemax Inc. by Systemax Inc..(Lovett, Mary-Olga) (Entered: 07/21/2008)</i>
07/21/2008	<u>131</u>	<i>NOTICE by Tiger Direct Inc Notice of Compliance (Lovett, Mary-Olga) (Entered: 07/21/2008)</i>
07/21/2008	<u>132</u>	<i>NOTICE by Systemax Inc. Notice of Compliance (Lovett, Mary-Olga) (Entered: 07/21/2008)</i>
07/23/2008	<u>133</u>	<i>ANSWER to <u>126</u> Answer to Complaint, Counterclaim by Sovereign Software LLC.(Giannetti, Thomas) (Entered: 07/23/2008)</i>
07/30/2008	<u>134</u>	<i>MOTION for Extension of Time to File Amended Answer, Affirmative Defenses and Counterclaims and to Exchange Proposed Terms and Claim Elements for Construction by CDW Corporation. (Attachments: # <u>1</u> Text of Proposed Order)(Duston, Thomas) (Entered: 07/30/2008)</i>
07/31/2008	<u>135</u>	<i>ORDER granting <u>134</u> Motion for Extension of Time. Defts are granted an extension of time through 8-20-08 to (1) assert any counterclaims without leave of Court; and (2) add any inequitable conduct allegations to pleadings without leave of Court, and the date for the exchange of terms and claim elements for construction is extended through 9-19-08. Signed by Judge Leonard Davis on 07/31/08. cc:attys 7-31-08 (mll,) (Entered: 07/31/2008)</i>
08/11/2008	<u>136</u>	<i>ANSWER to <u>129</u> Answer to Amended Complaint,, Counterclaim, by Sovereign Software LLC.(Giannetti, Thomas) (Entered: 08/11/2008)</i>
08/11/2008	<u>137</u>	<i>ANSWER to Complaint Answer to Counterclaims of Defendant Systemax, Docket Entry #130 by Sovereign Software LLC.(Giannetti, Thomas) (Entered: 08/11/2008)</i>
08/20/2008	<u>138</u>	<i>AMENDED ANSWER to <u>13</u> Amended Complaint, First, Amended COUNTERCLAIM against Sovereign Software LLC by CDW Corporation, Newegg Inc., Zappos.Com, Inc.. (Duston, Thomas) (Entered: 08/20/2008)</i>
09/02/2008	<u>139</u>	<i>APPLICATION to Appear Pro Hac Vice by Attorney Mira S Wolff for Newegg Inc.. (mll,) (Entered: 09/04/2008)</i>
09/02/2008	<u>140</u>	<i>APPLICATION to Appear Pro Hac Vice by Attorney Kent E Baldauf, Jr for Newegg Inc.. (mll,) (Entered: 09/04/2008)</i>
09/02/2008	<u>141</u>	<i>APPLICATION to Appear Pro Hac Vice by Attorney John W McIlvaine, III for Newegg Inc.. (mll,) (Entered: 09/04/2008)</i>
09/02/2008	<u>142</u>	<i>APPLICATION to Appear Pro Hac Vice by Attorney David C Hanson for Newegg Inc.. (mll,) (Entered: 09/04/2008)</i>
09/04/2008	<u>143</u>	<i>MOTION for Extension of Time to File Response/Reply as to <u>138</u> Amended Answer to Complaint, Counterclaim Agreed Motion to Extend Time to Reply or Otherwise Respond to Counterclaims of Defendants by Sovereign Software LLC. (Attachments: # <u>1</u> Text of Proposed Order Granting Sovereign Agreed Motion to Extend Time to Reply or Otherwise Respond to Defendants Counterclaims)(Giannetti, Thomas) (Entered: 09/04/2008)</i>
09/08/2008	<u>144</u>	<i>ORDER granting <u>143</u> Motion for Extension of Time to File Response/Reply re <u>143</u> MOTION for Extension of Time to File Response/Reply as to <u>138</u> Amended Answer to Complaint, Counterclaim Agreed Motion to Extend Time to Reply or Otherwise Respond to Counterclaims of Defendants Responses due by 10/10/2008 Replies due by 10/10/2008. Signed by Judge Leonard Davis on 9/5/2008. (gsg) (Entered: 09/08/2008)</i>
09/12/2008	<u>145</u>	<i>MOTION to Withdraw as Attorney Defendant Newegg Inc.'s Unopposed Motion for Withdrawal and Substitution of Counsel by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 09/12/2008)</i>
09/16/2008	<u>146</u>	<i>MOTION to Amend/Correct Defendant Newegg, Inc.'s Unopposed Motion to Amend the Docket Control Order by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 09/16/2008)</i>

09/17/2008	<u>147</u>	ORDER granting <u>146</u> Motion to Amend Docket Control Order. Parties are granted an extension of time until 10-31-08 to exchange proposed terms and claim elements for construction in compliance with PR 4-1. Signed by Judge Leonard Davis on 09/17/08. cc:attys 9-17-08 (mll,) (Entered: 09/17/2008)
09/19/2008	<u>148</u>	ORDER granting <u>145</u> Motion to Withdraw as Attorney. Added attorney Kent E Baldauf, Jr., John W McIlvaine, III, David C Hanson, and Mira S Wolff for Newegg Inc. Attorney Julianne Hartzell; Charles Edward Juister; Matthew C Nielsen; Scott A Sanderson; Thomas L Duston and Eric Hugh Findlay terminated. Signed by Judge Leonard Davis on 09/19/08. cc:attys 9-19-08 (mll,) (Entered: 09/19/2008)
09/19/2008	<u>149</u>	***SEE <u>150</u> FOR CERTIFICATE OF CONFERENCE*** MOTION for Protective Order by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Text of Proposed Order)(Giannetti, Thomas) Modified on 9/19/2008 (mjc). (Entered: 09/19/2008)
09/19/2008	<u>150</u>	AFFIDAVIT in Support re <u>149</u> MOTION for Protective Order <i>Certificate of Conference filed by Sovereign Software LLC.</i> (Giannetti, Thomas) (Entered: 09/19/2008)
09/19/2008	<u>151</u>	AFFIDAVIT in Support re <u>149</u> MOTION for Protective Order <i>filed by Sovereign Software LLC.</i> (Seraphine, Jennifer) (Entered: 09/19/2008)
09/19/2008	<u>152</u>	SEALED ADDITIONAL ATTACHMENTS to Main Document: <u>149</u> MOTION for Protective Order, Exhibit G. (Giannetti, Thomas) Modified on 9/19/2008 (mjc). (Entered: 09/19/2008)
10/06/2008	<u>153</u>	Unopposed MOTION for Extension of Time to File Response/Reply to <i>Plaintiff's Motion for Protective Order by TigerDirect, Inc. and by Systemax Inc..</i> (Attachments: # <u>1</u> Text of Proposed Order Order Granting Defendants Systemax, Inc. and TigerDirect, Inc.'s Unopposed Motion to Enlarge Time)(Lovett, Mary-Olga) (Entered: 10/06/2008)
10/06/2008	<u>154</u>	RESPONSE to Motion re <u>149</u> MOTION for Protective Order <i>filed by CDW Corporation.</i> (Duston, Thomas) (Entered: 10/06/2008)
10/07/2008	<u>155</u>	ORDER granting <u>153</u> Motion for Extension of Time to File Response re <u>149</u> MOTION for Protective Order ; Responses due by 10/10/2008. Signed by Judge Leonard Davis on 10/07/08. cc:attys 10-07-08 (mll,) (Entered: 10/07/2008)
10/10/2008	<u>156</u>	Reply ANSWER to <u>138</u> Amended Answer to Complaint, Counterclaim of <i>CDW, Newegg, and Zappos</i> by Sovereign Software LLC.(Giannetti, Thomas) (Entered: 10/10/2008)
10/10/2008	<u>157</u>	SEALED RESPONSE to Motion re <u>149</u> MOTION for Protective Order filed by Tiger Direct Inc. (Attachments: # <u>1</u> Exhibit EXHIBIT A, # <u>2</u> Exhibit EXHIBIT B, # <u>3</u> Exhibit EXHIBIT C, # <u>4</u> Exhibit EXHIBIT D, # <u>5</u> Exhibit EXHIBIT E, # <u>6</u> Exhibit EXHIBIT F)(Lovett, Mary-Olga) (Entered: 10/10/2008)
10/16/2008	<u>158</u>	***FILED IN ERROR. PLEASE DISREGARD.*** STIPULATION TO EXTEND TIME TO FILE REPLY by Sovereign Software LLC. (Tipi, Stela) Modified on 10/17/2008 (mjc). (Entered: 10/16/2008)
10/17/2008	<u>159</u>	Unopposed MOTION for Extension of Time to File Response/Reply by Sovereign Software LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Giannetti, Thomas) (Entered: 10/17/2008)
10/20/2008	<u>160</u>	ORDER granting <u>159</u> Motion for Extension of Time to File Response/Reply re <u>149</u> MOTION for Protective Order; Replies due by 10/23/2008. Signed by Judge Leonard Davis on 10/20/08. cc:attys 10-20-08 (mll,) (Entered: 10/20/2008)
10/23/2008	<u>161</u>	REPLY to Response to Motion re <u>149</u> MOTION for Protective Order (<i>Reply to CDW's Response</i>) <i>filed by Sovereign Software LLC.</i> (Attachments: # <u>1</u> Exhibit M)(Giannetti, Thomas) (Entered: 10/23/2008)

10/23/2008	<u>162</u>	REPLY to Response to Motion re <u>149</u> MOTION for Protective Order (<i>Reply to Systemax and TigerDirect's Response</i>) filed by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit N)(Giannetti, Thomas) (Entered: 10/23/2008)
10/31/2008	<u>163</u>	NOTICE of Disclosure by Soverain Software LLC of <i>Proposed Terms and Claim Elements for Construction</i> (pursuant to P.R. 4-1) (Giannetti, Thomas) (Entered: 10/31/2008)
10/31/2008	<u>164</u>	NOTICE of Disclosure by Newegg Inc. of <i>Proposed Terms and Claim Elements for Construction</i> (Yarbrough, Herbert) (Entered: 10/31/2008)
10/31/2008	<u>165</u>	NOTICE of Disclosure by CDW Corporation, Zappos.Com, Inc. of <i>Proposed Terms and Claim Elements</i> (Hartzell, Julianne) (Entered: 10/31/2008)
10/31/2008	<u>166</u>	NOTICE of Disclosure by Tiger Direct Inc of <i>Proposed Terms and Claim Elements for Construction</i> (Lovett, Mary-Olga) (Entered: 10/31/2008)
10/31/2008	<u>167</u>	NOTICE of Disclosure by Systemax Inc. of <i>Proposed Terms and Claim Elements for Construction</i> (Lovett, Mary-Olga) (Entered: 10/31/2008)
12/01/2008	<u>168</u>	STIPULATION of Dismissal <i>between Plaintiff Soverain Software LLC and Defendant Zappos.com, Inc.</i> by Soverain Software LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Giannetti, Thomas) (Entered: 12/01/2008)
12/02/2008	<u>169</u>	ORDER re <u>168</u> Stipulation of Dismissal filed by Soverain Software LLC. Pltf's complaint against Licensee is dismissed without prejudice. Licensee's counterclaims against pltf are dismissed without prejudice. Each party shall bear its own atty's fees, expenses and costs. Signed by Judge Leonard Davis on 12/02/08. cc:attys 12-03-08(mll,) (Entered: 12/03/2008)
01/13/2009	<u>170</u>	ORDER granting <u>149</u> Motion for Protective Order. The Court further orders Soverain to direct its attorneys and experts that they shall not access Tiger Direct's and Systemax's customer information when reviewing those parties' source code. Signed by Judge Leonard Davis on 01/13/09. cc:attys 1-14-09(mll,) (Entered: 01/14/2009)
01/13/2009	<u>171</u>	PROTECTIVE ORDER. Signed by Judge Leonard Davis on 01/13/09. cc:attys 1-14-09(mll,) (Entered: 01/14/2009)
01/20/2009	<u>172</u>	NOTICE by CDW Corporation <i>Notice of Change of Contact Information</i> (Findlay, Eric) (Entered: 01/20/2009)
02/06/2009	<u>173</u>	Agreed MOTION for Extension of Time to Complete Discovery <i>Comply with P.R. 4-2 to Exchange with Plaintiff Preliminary Claim Constructions and Extrinsic Evidence and to Exchange Privilege Logs</i> , Agreed MOTION for Extension of Time to File <i>Joint Claim Construction and Prehearing Statement</i> (P.R. 4-3) by Tiger Direct Inc, Systemax Inc.. (Attachments: # <u>1</u> Text of Proposed Order Order Granting Agreed Motion For Extension of Time for Defendants to Comply with Patent Rules 4-2 and 4-3)(Lovett, Mary-Olga) (Entered: 02/06/2009)
02/09/2009	<u>174</u>	ORDER granting <u>173</u> Motion for Extension of Time to Complete Discovery; granting <u>173</u> Motion for Extension of Time. Defts are granted an extension of time through 2-20-09 to comply with PR 4-2 to exchange preliminary claim constructions and extrinsic evidence and to exchange privilege log, and the date for filing joint claim construction and prehearing statement under PR 4-3 is extended through 3-16-09. Signed by Judge Leonard Davis on 02/09/09. cc:attys 2-9-09 (mll,) (Entered: 02/09/2009)
02/10/2009	<u>175</u>	Unopposed MOTION to Vacate <i>ORDER (DKT. NO. 174) AND TO ENTER A CORRECTED ORDER</i> by Soverain Software LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Giannetti, Thomas) (Entered: 02/10/2009)
02/11/2009	<u>176</u>	ORDER granting <u>175</u> Motion to Vacate <u>174</u> Order on Motion for Extension of Time to Complete Discovery, and Order on Motion for Extension of Time to File. The deadline for complying with PR 4-2 is set to 2-20-09 for all parties. The deadline for the exchange of privilege logs is set to 2-20-09 for all parties. The deadline for complying with PR 4-3 is set to 3-16-09 for all parties. Signed by Judge Leonard Davis on 02/11/09. cc:attys 2-11-09(mll,) (Entered: 02/11/2009)

02/19/2009	<u>177</u>	NOTICE of Attorney Appearance by Ognjan V Shentov on behalf of Sovereign Software LLC (Shentov, Ognjan) (Entered: 02/19/2009)
02/20/2009	<u>178</u>	NOTICE by Sovereign Software LLC of <i>Compliance with P.R. 4-2</i> (Giannetti, Thomas) (Entered: 02/20/2009)
02/20/2009	<u>179</u>	NOTICE by Systemax Inc. of <i>Compliance with P.R. 4-2</i> (Lovett, Mary-Olga) (Entered: 02/20/2009)
02/20/2009	<u>180</u>	NOTICE by Tiger Direct Inc of <i>Compliance with P.R. 4-2</i> (Lovett, Mary-Olga) (Entered: 02/20/2009)
02/20/2009	<u>181</u>	NOTICE by Systemax Inc. <i>regarding Privilege</i> (Lovett, Mary-Olga) (Entered: 02/20/2009)
02/20/2009	<u>182</u>	NOTICE by Tiger Direct Inc <i>regarding Privilege</i> (Lovett, Mary-Olga) (Entered: 02/20/2009)
02/20/2009	<u>183</u>	NOTICE by CDW Corporation of <i>Compliance with Docket Control Order Regarding Privilege</i> (Duston, Thomas) (Entered: 02/20/2009)
02/20/2009	<u>184</u>	NOTICE by CDW Corporation of <i>Compliance with P.R. 4-2</i> (Duston, Thomas) (Entered: 02/20/2009)
02/20/2009	<u>185</u>	NOTICE by Newegg Inc. <i>Notice of Compliance with P.R. 4-2</i> (Yarbrough, Herbert) (Entered: 02/20/2009)
03/12/2009	<u>186</u>	STIPULATION of Dismissal <i>between Plaintiff Sovereign Software LLC and Defendant CDW Corporation</i> by Sovereign Software LLC. (Attachments: # <u>1</u> Text of Proposed Order [Proposed] Order of Dismissal with Prejudice)(Giannetti, Thomas) (Entered: 03/12/2009)
03/16/2009	<u>187</u>	ORDER re <u>186</u> Stipulation of Dismissal filed by Sovereign Software LLC. Pltf's complaint against deft CDW Corporation is dismissed with prejudice. CDW's counterclaims against pltf are dismissed with prejudice. Each party shall bear its own attys' fees, expenses and costs. Signed by Judge Leonard Davis on 03/16/09. cc:attys 3-16-09(mll,) (Entered: 03/16/2009)
03/16/2009	<u>188</u>	PR 4-3 Joint Submission. (Attachments: # <u>1</u> Exhibit Claim Construction Comparison Chart, # <u>2</u> Exhibit Sovereign's Claim Constructions and Support, # <u>3</u> Exhibit Defendants' Joint Claim Constructions and Support, # <u>4</u> Exhibit SM and TD's Claim Construction and Support exhibit, # <u>5</u> Exhibit Defendants' Adopted Constructions)(Shentov, Ognjan) (Entered: 03/16/2009)
03/17/2009	<u>189</u>	ORDER re <u>188</u> Claim Construction Chart, filed by Sovereign Software LLC. The Court orders the parties to meet and confer and narrow the number of disputed terms to a reasonable number. The Court also reminds the parties that the page limits governing dispositive motions apply to claim construction briefing and will not be extended absent a showing of good cause. Signed by Judge Leonard Davis on 03/17/09. cc:attys 3-17-09(mll,) (Entered: 03/17/2009)
03/19/2009	<u>190</u>	NOTICE by Sovereign Software LLC of <i>Compliance With Docket Control Order Regarding Technical Advisors</i> (Giannetti, Thomas) (Entered: 03/19/2009)
03/23/2009	<u>191</u>	Joint MOTION for Leave to File <i>Amended P.R. 4-3 Claim Construction and Prehearing Statement</i> by Sovereign Software LLC. (Attachments: # <u>1</u> Text of Proposed Order Order, # <u>2</u> Appendix Amazon Markman Order, # <u>3</u> Supplement Amended P.R. 4-3 Joint Claim Construction and Prehearing Statement, # <u>4</u> Exhibit Claim Construction Comparison Chart, # <u>5</u> Exhibit Sovereign's Constructions and Support, # <u>6</u> Exhibit Defendants' Joint Constructions and Support, # <u>7</u> Exhibit Defendants SM and TD Constructions for a Claim term, # <u>8</u> Exhibit Defendants' adopted Amazon constructions and support)(Shentov, Ognjan) (Entered: 03/23/2009)
03/24/2009	<u>192</u>	ORDER granting <u>191</u> Motion for Leave to File Amended Claim Construction. Signed by Judge Leonard Davis on 03/24/09. cc:attys 3-24-09 (mll,) (Entered: 03/24/2009)

03/25/2009	<u>193</u>	***DOCUMENT FILED IN ERROR. PLEASE DISREGARD.*** JOINT AMENDED P.R. 4-3 CLAIM CONSTRUCTION AND PREHEARING STATEMENT filed by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit A – Claim Construction Comparison Chart, # <u>2</u> Exhibit B – Sovereign's Proposed Claim Constructions and support, # <u>3</u> Exhibit C – Defendants' Joint Proposed Claim Constructions and support, # <u>4</u> Exhibit D – SM and TD Claim Construction and support for a claim term, # <u>5</u> Exhibit E – Defendants' adopted Amazon claim constructions)(Shentov, Ognjan) Modified on 3/26/2009 (mjc,). (Entered: 03/25/2009)
03/26/2009		***FILED IN ERROR. Document # 193, Amended PR 4-3 Joint Claim Construction and Prehearing Statement. PLEASE IGNORE. TO BE REFILED WITH SIGNATURES OF ATTORNEYS FOR ALL PARTIES.*** (mjc,) (Entered: 03/26/2009)
03/26/2009	<u>194</u>	ORDER that the parties file any objections they have to the appointment of Michael T McLemore as the Court's technical advisor, by 4-3-09. Signed by Judge Leonard Davis on 03/26/09. cc:attys 3-26-09(mll,) (Entered: 03/26/2009)
03/27/2009	<u>195</u>	JOINT AMENDED P.R. 4-3 CLAIM CONSTRUCTION AND PREHEARING STATEMENT (Attachments: # <u>1</u> Exhibit a – Claim Construction Comparison Chart, # <u>2</u> Exhibit B – Sovereign's Claim Constructions and Support, # <u>3</u> Exhibit C – Defendants' Joint Claim Constructions and Support, # <u>4</u> Exhibit D – Defendants' SM and TD Claim construction for a term, # <u>5</u> Exhibit E – Defendants' adopted Amazon claim constructions)(Shentov, Ognjan) (Entered: 03/27/2009)
04/02/2009	<u>196</u>	NOTICE by Sovereign Software LLC of <i>No Objection to Proposed Technical Advisor</i> (Giannetti, Thomas) (Entered: 04/02/2009)
04/08/2009	<u>197</u>	ORDER appointing Michael T McLemore to the position of technical advisor in this case, with his costs to be assessed equally between pltf and defts and timely paid as billed. Signed by Judge Leonard Davis on 04/08/09. cc:attys 4-8-09(mll,) (Entered: 04/08/2009)
04/13/2009	<u>198</u>	NOTICE by Sovereign Software LLC OF <i>SUBMISSION OF MARKMAN TUTORIAL</i> (Giannetti, Thomas) (Entered: 04/13/2009)
04/15/2009	<u>199</u>	CLAIM CONSTRUCTION BRIEF filed by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit '314 Patent, # <u>2</u> Exhibit '492 Patent, # <u>3</u> Exhibit '639 Patent, # <u>4</u> Exhibit US Patent 5,708,780, # <u>5</u> Exhibit US Patent 5,724,424, # <u>6</u> Exhibit Order – Dkt 192, # <u>7</u> Exhibit Excerpt from Defendants' PR 4-3 Exhibit C, # <u>8</u> Exhibit Excerpt from Defendants PR 4-3 Exhibit D, # <u>9</u> Exhibit Excerpt from File History of '639 Patent, # <u>10</u> Exhibit Excerpt 2 from File History of '639 Patent, # <u>11</u> Exhibit Amazon Markman Order, # <u>12</u> Exhibit Appendices A-D title pages to Application 08/328,133, # <u>13</u> Exhibit Excerpt from a Sovereign internal document)(Shentov, Ognjan) (Entered: 04/15/2009)
04/30/2009	<u>200</u>	NOTICE by Newegg Inc. of <i>Complaince</i> (Baldauf, Kent) (Entered: 04/30/2009)
05/01/2009	<u>201</u>	Notice of Withdrawal of Dispute as to Certian Claims filed by Systemax Inc.. (Lovett, Mary-Olga) (Entered: 05/01/2009)
05/01/2009	<u>202</u>	Supplemental Notice of Withdrawal of Dispute as to Certain Clam Terms filed by Systemax Inc.. (Lovett, Mary-Olga) (Entered: 05/01/2009)
05/01/2009	<u>203</u>	REPLY to <u>199</u> Claim Construction Brief,, filed by Newegg Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Baldauf, Kent) (Entered: 05/01/2009)
05/01/2009	<u>204</u>	CLAIM CONSTRUCTION BRIEF filed by Tiger Direct Inc, Systemax Inc.. (Attachments: # <u>1</u> Affidavit Declaration of Mary-Olga Lovett, # <u>2</u> Exhibit Exhibit 1, # <u>3</u> Exhibit EXHIBIT 2, # <u>4</u> Exhibit Exhibit 3, # <u>5</u> Exhibit Exhibit 4, # <u>6</u> Exhibit Exhibit 5 – Part 1 of 3, # <u>7</u> Exhibit Exhibit 5 – Part 2 of 3, # <u>8</u> Exhibit Exhibit 5 – Part 3 of 3, # <u>9</u> Exhibit Exhibit 6, # <u>10</u> Exhibit Exhibit 7, # <u>11</u> Exhibit Exhibit 8, # <u>12</u> Exhibit Exhibit 9 – Part 1 of 2, # <u>13</u> Exhibit Exhibit 9 – Part 2 of 2, # <u>14</u> Exhibit Exhibit 10, # <u>15</u> Exhibit Exhibit 11, # <u>16</u> Exhibit Exhibit 12, # <u>17</u> Exhibit Exhibit 13)(Lovett, Mary-Olga) (Entered: 05/01/2009)

05/15/2009	<u>205</u>	REPLY to <u>204</u> Systemax and TigerDirect's Responsive Claim Construction Brief, filed by <i>Sovereign Software LLC</i> . (Shentov, Ognjan) (Entered: 05/15/2009)
05/15/2009	<u>206</u>	REPLY to <u>203</u> Newegg's Responsive Claim Construction Brief, filed by <i>Sovereign Software LLC</i> . (Attachments: # <u>1</u> Exhibit Exh 14, Excerpts from Appendix A to the '492 Patent)(Shentov, Ognjan) (Entered: 05/15/2009)
05/15/2009	<u>207</u>	Joint Notice Regarding Estimated Time for Markman Hearing, filed by <i>Sovereign Software LLC</i> . (Shentov, Ognjan) (Entered: 05/15/2009)
05/21/2009	<u>208</u>	NOTICE by <i>Sovereign Software LLC</i> <i>Joint Notice of Compliance with PR 4-5(d)</i> (Smith, Michael) (Entered: 05/21/2009)
05/22/2009	<u>209</u>	STIPULATION of Dismissal <i>between Plaintiff Sovereign Software LLC and Defendants Systemax Inc. and TigerDirect, Inc.</i> by <i>Sovereign Software LLC</i> . (Attachments: # <u>1</u> Text of Proposed Order of Dismissal with Prejudice)(Giannetti, Thomas) (Entered: 05/22/2009)
05/26/2009	<u>210</u>	NOTICE by <i>Newegg Inc.</i> of <i>Withdrawal of Dispute as to Certain Claim Terms</i> (Baldauf, Kent) (Entered: 05/26/2009)
05/26/2009	<u>211</u>	ORDER re <u>209</u> Stipulation of Dismissal filed by <i>Sovereign Software LLC</i> . Pltf's complaint against <i>Systemax Inc</i> and <i>TigerDirect Inc</i> is dismissed with prejudice. <i>Systemax's</i> counterclaims against pltf are dismissed with prejudice. Each party shall bear its own attys fees, expenses and costs. Signed by Judge Leonard Davis on 05/26/09. cc:attys 5-26-09(mll,) (Entered: 05/26/2009)
05/27/2009	<u>212</u>	NOTICE by <i>Sovereign Software LLC, Newegg Inc.</i> of <i>Joint Agreement re: Remaining Claim Terms</i> (Attachments: # <u>1</u> Exhibit 1 - Revised 4-5(d) submission, # <u>2</u> Text of Proposed Order - with Appendix A)(Smith, Michael) (Entered: 05/27/2009)
05/27/2009	<u>213</u>	ORDER that pltf and defts pay \$12,500.00 each to Michael McLemore, the technical consultant to the Court, for services through 5-21-09, for the total amount of \$25,000.00. Signed by Judge Leonard Davis on 05/27/09. cc:attys 5-27-09(mll,) (Entered: 05/27/2009)
05/28/2009	<u>214</u>	CLAIM CONSTRUCTION ORDER. The Court having been advised that the parties have agreed on the constructions for the remaining claim terms hereby adopts the parties' agreed constructions as set out in Appendix A to this order. Signed by Judge Leonard Davis on 05/28/09. cc:attys 5-28-09(mll,) (Entered: 05/28/2009)
07/21/2009	<u>215</u>	Unopposed MOTION for Extension of Time to Complete Discovery by <i>Newegg Inc.</i> . (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 07/21/2009)
07/22/2009	<u>216</u>	ORDER granting <u>215</u> Motion for Extension of Time to Complete Discovery. Signed by Judge Leonard Davis on 07/22/09. cc:attys 7-22-09 (mll,) (Entered: 07/22/2009)
07/23/2009	<u>217</u>	Unopposed MOTION for Extension of Time Regarding Pre-Trial Deadlines by <i>Sovereign Software LLC</i> . (Attachments: # <u>1</u> Text of Proposed Order)(Smith, Michael) (Entered: 07/23/2009)
07/24/2009	<u>218</u>	ORDER granting <u>217</u> Motion for Extension of Time regarding pre-trial deadlines. Signed by Judge Leonard Davis on 07/24/09. cc:attys 7-24-09 (mll,) (Entered: 07/24/2009)
07/31/2009	<u>219</u>	Unopposed SEALED PATENT MOTION to Amend and Supplement Infringement Contentions by <i>Sovereign Software LLC</i> . (Attachments: # <u>1</u> Exhibit Exhibit 1 to Motion to Amend and Supplement Infringement Contentions, # <u>2</u> Text of Proposed Order Proposed Order)(Shentov, Ognjan) (Entered: 07/31/2009)
08/03/2009	<u>220</u>	ORDER granting <u>219</u> Sealed Patent Motion for leave to amend/supplement its Infringement Contentions. It is Ordered that the 7-23-09 Expert Report of Jack D Grimes, Ph.D. regarding US Patent Nos 7,272,639; 5,715,314, and 5,909,492 be deemed as <i>Sovereign's</i> amended and supplemented infringement contentions for defendant <i>Newegg</i> . Signed by Judge Leonard Davis on 08/03/09. cc:attys

		8-03-09(mll,) (Entered: 08/03/2009)
08/17/2009	<u>221</u>	MOTION for Summary Judgment by Newegg Inc.. (Attachments: # <u>1</u> Statement of Undisputed Material Facts, # <u>2</u> Declaration of Kent E. Baldauf, Jr., # <u>3</u> Exhibit A, # <u>4</u> Exhibit B-1, # <u>5</u> Exhibit B-2, # <u>6</u> Exhibit C, # <u>7</u> Exhibit D, # <u>8</u> Exhibit E, # <u>9</u> Exhibit F, # <u>10</u> Exhibit G, # <u>11</u> Exhibit H, # <u>12</u> Exhibit I, # <u>13</u> Exhibit J, # <u>14</u> Exhibit K, # <u>15</u> Exhibit L, # <u>16</u> Exhibit M, # <u>17</u> Exhibit N, # <u>18</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 08/17/2009)
08/24/2009	<u>222</u>	Unopposed MOTION for Extension of Time to File <i>Soverain's Opposition to Newegg's Motion for Summary Judgment of Invalidity and/or Denial of Priority Claim of the '639 Patent</i> by Soverain Software LLC. (Attachments: # <u>1</u> Text of Proposed Order Granting Soverain's Unopposed Motion for an Extension of Time)(Giannetti, Thomas) (Entered: 08/24/2009)
08/24/2009	<u>223</u>	Unopposed MOTION to Amend/Correct <u>216</u> Order on Motion for Extension of Time to Complete Discovery by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 08/24/2009)
08/25/2009	<u>224</u>	ORDER granting <u>222</u> Motion for Extension of Time. Soverain Software LLC shall file its Opposition to Newegg Inc's Motion for Summary Judgment of Invalidity and/or Denial of Priority Claim of the '639 Patent by 9-11-2009. Signed by Judge Leonard Davis on 08/25/09. cc:attys 8-26-09 (mll,) (Entered: 08/26/2009)
08/25/2009	<u>225</u>	ORDER granting <u>223</u> Motion to Amend/Correct and for extension of time. The discovery deadline in this action is extended through 9-10-2009. Signed by Judge Leonard Davis on 08/25/09. cc:attys 8-26-09 (mll,) (Entered: 08/26/2009)
08/26/2009	<u>226</u>	Unopposed MOTION for Leave to File <i>Motion for Leave to Supplement Invalidity Contentions</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 08/26/2009)
08/27/2009	<u>227</u>	ORDER granting <u>226</u> Motion for Leave to File Supplement. Newegg Inc is granted leave to supplement its invalidity contentions and serve the said Second Supplemental Invalidity Contentions on the pltf. Signed by Judge Leonard Davis on 08/27/09. cc:attys 8-28-09 (mll,) (Entered: 08/28/2009)
08/28/2009	<u>228</u>	Unopposed MOTION to Amend/Correct <u>221</u> MOTION for Summary Judgment <i>Newegg's Unopposed Motion to Enter Substitute Statement of Undisputed Material Facts</i> by Newegg Inc.. (Attachments: # <u>1</u> Statement of Undisputed Material Facts, # <u>2</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 08/28/2009)
08/31/2009	<u>229</u>	ORDER granting <u>228</u> Motion to Amend and Enter Substitute Statement of Undisputed Material Facts. Signed by Judge Leonard Davis on 08/31/09. cc:attys 8-31-09(mll,) (Entered: 08/31/2009)
09/09/2009	<u>230</u>	First SEALED PATENT MOTION for <i>Partial Summary Judgment of Infringement of the '492 Patent</i> by Soverain Software LLC. (Attachments: # <u>1</u> Supplement Statement of Undisputed Material Facts, # <u>2</u> Exhibit, # <u>3</u> Exhibit Declaration of Jack Grimes, # <u>4</u> Exhibit Amazon Markman Order, # <u>5</u> Exhibit Markman Order, # <u>6</u> Exhibit Excerpts from Tittle Opening Report, # <u>7</u> Exhibit Excerpts from Tittle Deposition Transcript, # <u>8</u> Exhibit Excerpts from Tittle Deposition Transcript of 09-02, # <u>9</u> Exhibit Letter from Newegg Counsel, # <u>10</u> Exhibit Transaction January 2008, # <u>11</u> Exhibit Transaction June 2009, # <u>12</u> Exhibit Excerpts from Wu Deposition Transcript, # <u>13</u> Exhibit Excerpts from Wu Deposition Transcript 07-09, # <u>14</u> Exhibit RFC 791, # <u>15</u> Exhibit Newegg System Diagram 1, # <u>16</u> Exhibit Newegg System Diagram 2, # <u>17</u> Exhibit Newegg FAQ pages, # <u>18</u> Exhibit Newegg flowchart, # <u>19</u> Exhibit IEEE Dictionary, # <u>20</u> Exhibit Excerpts from Tanenbaum, # <u>21</u> Exhibit RFC 2616, # <u>22</u> Exhibit Newegg's Responses to RFAs, # <u>23</u> Exhibit Newegg Supplemental Interrogatory Responses, # <u>24</u> Exhibit RFC1808, # <u>25</u> Exhibit Tittel Rebuttal Report on Infringement, # <u>26</u> Text of Proposed Order Proposed Order)(Shentov, Ognjan) (Entered: 09/09/2009)
09/11/2009	<u>231</u>	RESPONSE in Opposition re <u>221</u> MOTION for Summary Judgment of <i>Invalidity of the '639 Patent filed by Soverain Software LLC</i> . (Attachments: # <u>1</u> Soverain's Statement of Genuine Issues, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9, # <u>11</u>

		Exhibit 10, # <u>12</u> Exhibit 11)(Giannetti, Thomas) (Entered: 09/11/2009)
09/14/2009	<u>232</u>	Trial Witness List by Sovereign Software LLC. (Giannetti, Thomas) (Entered: 09/14/2009)
09/14/2009	<u>233</u>	Trial Witness List by Newegg Inc.. (Yarbrough, Herbert) (Entered: 09/14/2009)
09/16/2009	<u>234</u>	Unopposed MOTION for Extension of Time to File <i>Opposition to Sovereign Software LLC's Motion for Partial Summary Judgment of Infringement of U.S. Patent No. 5,909,492</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 09/16/2009)
09/17/2009	<u>235</u>	ORDER granting <u>234</u> Motion for Extension of Time. Newegg Inc is granted an extension of time to file its Opposition to Sovereign Software LLC's Motion for Partial Summary Judgment through 9-28-2009. Signed by Judge Leonard Davis on 09/17/09. cc:attys 9-17-09 (ml,) (Entered: 09/17/2009)
09/18/2009	<u>236</u>	REPLY to Response to Motion re <u>221</u> MOTION for Summary Judgment <i>Newegg's Reply to Plaintiff Sovereign's Opposition to Newegg's Motion for Summary Judgment Regarding the Improper Priority Claim and Invalidity of the '639 Patent filed by Newegg Inc..</i> (Attachments: # <u>1</u> Exhibit A)(Yarbrough, Herbert) (Entered: 09/18/2009)
09/18/2009	<u>237</u>	FILED IN ERROR. PLEASE DISREGARD. See Corrected Entry 238 . Document sealed because of of Supplemental ResponseNOTICE of Attorney Appearance by Debra R Smith on behalf of Sovereign Software LLC (kls,) Modified on 9/21/2009 (gsg). (Entered: 09/18/2009)
09/18/2009	<u>238</u>	APPLICATION to Appear Pro Hac Vice by Attorney Debra R Smith for Sovereign Software LLC. Receipt #6-1-19352. (Attachments: # <u>1</u> Supplement)(gsg) (Entered: 09/21/2009)
09/25/2009	<u>239</u>	Rebuttal Witness List by Sovereign Software LLC. (Giannetti, Thomas) (Entered: 09/25/2009)
09/25/2009	<u>240</u>	Rebuttal Trial Witness List by Newegg Inc.. (Yarbrough, Herbert) (Entered: 09/25/2009)
09/28/2009	<u>241</u>	SUR-REPLY to Reply to Response to Motion re <u>221</u> MOTION for Summary Judgment <i>filed by Sovereign Software LLC.</i> (Giannetti, Thomas) (Entered: 09/28/2009)
09/28/2009	<u>242</u>	Opposed MOTION to Strike <i>A. Trevor as Expert Witness, To Preclude E. Tittel's Testimony Based on Trevor Report, and To Exclude Trevor Report from Evidence</i> by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Text of Proposed Order)(Giannetti, Thomas) (Entered: 09/28/2009)
09/28/2009	<u>243</u>	Opposed SEALED MOTION <i>To Strike Portions Of Newegg Damages Expert Report Relying On "Design Around" Memo, Preclude Testimony On Those Portions, And Preclude Newegg From Offering "Design Around" Memo As Evidence</i> by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Text of Proposed Order)(Giannetti, Thomas) (Entered: 09/28/2009)
09/28/2009	<u>244</u>	***DOCUMENT FILED IN ERROR. PLEASE DISREGARD.*** SEALED MOTION <i>TO EXCLUDE CERTAIN OPINIONS OF W. CHRISTOPHER BAKEWELL</i> by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Text of Proposed Order)(Tipi, Stela) Modified on 9/30/2009 (mjc,). (Entered: 09/28/2009)
09/28/2009	<u>245</u>	***DOCUMENT FILED IN ERROR. PLEASE DISREGARD.*** SEALED MOTION <i>Defendant's Motion and Supporting Brief to Exclude the Expert Report and Testimony of James Nawrocki</i> by Newegg Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Text of Proposed Order)(Yarbrough, Herbert) Modified on 9/30/2009 (mjc,). (Entered: 09/28/2009)

09/28/2009	<u>246</u>	***DOCUMENT FILED IN ERROR. PLEASE DISREGARD.*** SEALED PATENT MOTION <i>Soverain's Daubert Motion to Preclude Expert Testimony of Edward Tittel</i> by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit July 23 Expert Report, # <u>2</u> Exhibit August 18 Rebuttal Expert Report, # <u>3</u> Exhibit August 28 Supplemental Expert Report, # <u>4</u> Exhibit Tittel Dep Transcript Vol 1 September 2, 2009, # <u>5</u> Exhibit Tittel Dep Transcript Vol 2, September 2, 2009, # <u>6</u> Exhibit Tittel Dep Transcript Vol 3, September 3, 2009, # <u>7</u> Exhibit Amazon Claim Construction Order adopted by Dkt 192, # <u>8</u> Exhibit Markman Order May 2009, # <u>9</u> Exhibit Excerpts from Newegg's April 30 2009 Invalidity Contentions, # <u>10</u> Text of Proposed Order Proposed Order)(Shentov, Ognjan) Modified on 9/30/2009 (mjc,). (Entered: 09/28/2009)
09/28/2009	<u>247</u>	SEALED MOTION <i>Defendant's Motion for Partial Summary Judgment of Invalidity of the "Shopping Cart Claims" in U.S. Patents No. 5,715,314 and No. 5,909,492</i> by Newegg Inc.. (Attachments: # <u>1</u> Statement of Undisputed Material Facts, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9, # <u>11</u> Exhibit 10, # <u>12</u> Exhibit 11, # <u>13</u> Exhibit 12, # <u>14</u> Exhibit 13, # <u>15</u> Exhibit 14, # <u>16</u> Exhibit 15, # <u>17</u> Exhibit 16, # <u>18</u> Exhibit 16A, # <u>19</u> Exhibit 17, # <u>20</u> Exhibit 17A, # <u>21</u> Exhibit 18, # <u>22</u> Exhibit 19, # <u>23</u> Exhibit 20, # <u>24</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 09/28/2009)
09/28/2009	<u>248</u>	SEALED MOTION <i>Defendant's Motion for Summary Judgment of Non-Infringement of U.S. Patent Nos. 7,272,639, 5,715,314, and 5,909,492</i> by Newegg Inc.. (Attachments: # <u>1</u> Statement of Undisputed Material Facts, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 09/28/2009)
09/28/2009	<u>249</u>	Agreed MOTION for Leave to File Excess Pages <i>With Respect to Summary Judgment Briefing</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 09/28/2009)
09/28/2009	<u>250</u>	SEALED RESPONSE to Motion re <u>230</u> First SEALED PATENT MOTION for Partial Summary Judgment of Infringement of the '492 Patent filed by Newegg Inc. (Attachments: # <u>1</u> Response to Statement of Undisputed Material Facts, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J)(Yarbrough, Herbert) (Entered: 09/28/2009)
09/29/2009	<u>251</u>	ORDER granting <u>249</u> Motion for Leave to File Excess Pages With Respect to Summary Judgment Briefing. Signed by Judge Leonard Davis on 09/29/09. cc:attys 9-30-09(mll,) (Entered: 09/30/2009)
09/30/2009		NOTICE of Deficiency regarding the <u>244</u> , <u>245</u> , <u>246</u> Sealed Motions submitted by Soverain Software LLC, Newegg Inc. The motions do not contain a certificate of conference as required per Local Rule CV-7, and document <u>245</u> exceeds the page limit. Correction should be made by one business day. (mjc,) (Entered: 09/30/2009)
10/01/2009	<u>252</u>	SEALED MOTION <i>Defendant's Daubert Motion and Supporting Brief to Exclude the Opinions of James Nawrocki</i> by Newegg Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 10/01/2009)
10/01/2009	<u>253</u>	Opposed SEALED PATENT MOTION <i>TO EXCLUDE EXPERT TESTIMONY OF EDWARD R. TITTEL</i> by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Text of Proposed Order)(Tipi, Stela) (Entered: 10/01/2009)
10/01/2009	<u>254</u>	Opposed SEALED PATENT MOTION <i>TO EXCLUDE CERTAIN OPINIONS OF W. CHRISTOPHER BAKEWELL</i> by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Text of Proposed Order)(Tipi, Stela) (Entered: 10/01/2009)
10/05/2009	<u>255</u>	Unopposed MOTION for Extension of Time to File Response/Reply to <i>Defendant Newegg Inc.'s Opposition to Soverain's Motion for Partial Summary Judgment of Infringement of US Pat 5,909,492 (Dkt. 250)</i> by Soverain Software LLC.

		(Attachments: # <u>1</u> Text of Proposed Order Proposed Order)(Shentov, Ognjan) (Entered: 10/05/2009)
10/06/2009	<u>256</u>	ORDER granting <u>255</u> Motion for Extension of Time to File Response/Reply re <u>230</u> First SEALED PATENT MOTION for Partial Summary Judgment of Infringement of the '492 Patent; Replies due by 10/13/2009. Signed by Judge Leonard Davis on 10/06/09. cc:attys 10-06-09 (mll,) (Entered: 10/06/2009)
10/13/2009	<u>257</u>	RESPONSE in Opposition re <u>247</u> SEALED MOTION Defendant's Motion for Partial Summary Judgment of Invalidity of the "Shopping Cart Claims" in U.S. Patents No. 5,715,314 and No. 5,909,492 filed by Sovereign Software LLC. (Attachments: # <u>1</u> Sovereign's Statement of Genuine Issues, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H)(Giannetti, Thomas) (Entered: 10/13/2009)
10/13/2009	<u>258</u>	SEALED PATENT REPLY to Newegg's Opposition to PATENT Motion re <u>230</u> First SEALED PATENT MOTION for Partial Summary Judgment of Infringement of the '492 Patent filed by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit 25- '492 patent, # <u>2</u> Exhibit 26 - Appendix G to the '492 patent, # <u>3</u> Exhibit 27 - Excerpts from the Deposition Transcript of Edward Tittel)(Shentov, Ognjan) (Entered: 10/13/2009)
10/13/2009	<u>259</u>	RESPONSE in Opposition re <u>253</u> Opposed SEALED PATENT MOTION TO EXCLUDE EXPERT TESTIMONY OF EDWARD R. TITTEL filed by Newegg Inc.. (Yarbrough, Herbert) (Entered: 10/13/2009)
10/13/2009	<u>260</u>	RESPONSE in Opposition re <u>242</u> Opposed MOTION to Strike A. Trevor as Expert Witness, To Preclude E. Tittel's Testimony Based on Trevor Report, and To Exclude Trevor Report from Evidence filed by Newegg Inc.. (Yarbrough, Herbert) (Entered: 10/13/2009)
10/13/2009	<u>261</u>	SEALED RESPONSE to Motion re <u>243</u> Opposed SEALED MOTION To Strike Portions Of Newegg Damages Expert Report Relying On "Design Around" Memo, Preclude Testimony On Those Portions, And Preclude Newegg From Offering "Design Around" Memo As Evidence filed by Newegg Inc.. (Yarbrough, Herbert) (Entered: 10/13/2009)
10/13/2009	<u>262</u>	SEALED PATENT Sovreain's Opposition to SEALED PATENT MOTION re <u>248</u> SEALED MOTION Defendant's Motion for Summary Judgment of Non-Infringement of U.S. Patent Nos. 7,272,639, 5,715,314, and 5,909,492 filed by Sovereign Software LLC. (Attachments: # <u>1</u> Supplement Sovereign's Response to Statement of Facts, # <u>2</u> Exhibit Declaration of Jack Grimes, Ph.D. and supporting documents, # <u>3</u> Exhibit Excerpts from Deposition Transcript of Edward Tittel, # <u>4</u> Exhibit System Diagram, # <u>5</u> Exhibit Excerpts from Deposition Transcript Wu, # <u>6</u> Exhibit Sponsored Links, # <u>7</u> Exhibit Newegg email 1, # <u>8</u> Exhibit Newegg email 2, # <u>9</u> Exhibit Response to RFA, # <u>10</u> Exhibit FAQ page)(Shentov, Ognjan) (Entered: 10/13/2009)
10/13/2009	<u>263</u>	SEALED RESPONSE to Motion re <u>254</u> Opposed SEALED PATENT MOTION TO EXCLUDE CERTAIN OPINIONS OF W. CHRISTOPHER BAKEWELL filed by Newegg Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(Yarbrough, Herbert) (Entered: 10/13/2009)
10/13/2009	<u>264</u>	SEALED RESPONSE to Motion re <u>252</u> SEALED MOTION Defendant's Daubert Motion and Supporting Brief to Exclude the Opinions of James Nawrocki filed by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Tipi, Stela) (Entered: 10/13/2009)
10/21/2009	<u>265</u>	REPLY to Response to Motion re <u>248</u> SEALED MOTION Defendant's Motion for Summary Judgment of Non-Infringement of U.S. Patent Nos. 7,272,639, 5,715,314, and 5,909,492 filed by Newegg Inc.. (Yarbrough, Herbert) (Entered: 10/21/2009)
10/21/2009	<u>266</u>	REPLY to Response to Motion re <u>247</u> SEALED MOTION Defendant's Motion for Partial Summary Judgment of Invalidity of the "Shopping Cart Claims" in U.S. Patents No. 5,715,314 and No. 5,909,492 filed by Newegg Inc.. (Yarbrough, Herbert) (Entered: 10/21/2009)

10/21/2009	<u>267</u>	SEALED REPLY to Response to Motion re <u>252</u> SEALED MOTION Defendant's Daubert Motion and Supporting Brief to Exclude the Opinions of James Nawrocki filed by Newegg Inc. Attachments: #(1) Exhibit M (Yarbrough, Herbert) (Entered: 10/21/2009)
10/21/2009	<u>268</u>	SUR-REPLY to Reply to Response to Motion re <u>230</u> First SEALED PATENT MOTION for Partial Summary Judgment of Infringement of the '492 Patent filed by Newegg Inc.. (Yarbrough, Herbert) (Entered: 10/21/2009)
10/23/2009	<u>269</u>	SEALED PATENT REPLY to Response to PATENT Motion re <u>254</u> Opposed SEALED PATENT MOTION TO EXCLUDE CERTAIN OPINIONS OF W. CHRISTOPHER BAKEWELL filed by Soverain Software LLC. (Smith, Debra) (Entered: 10/23/2009)
10/23/2009	<u>270</u>	SEALED REPLY to Response to Motion re <u>243</u> Opposed SEALED MOTION To Strike Portions Of Newegg Damages Expert Report Relying On "Design Around" Memo, Preclude Testimony On Those Portions, And Preclude Newegg From Offering "Design Around" Memo As Evidence filed by Soverain Software LLC. (Giannetti, Thomas) (Entered: 10/23/2009)
10/23/2009	<u>271</u>	REPLY to Response to Motion re <u>242</u> Opposed MOTION to Strike A. Trevor as Expert Witness, To Preclude E. Tittel's Testimony Based on Trevor Report, and To Exclude Trevor Report from Evidence filed by Soverain Software LLC. (Giannetti, Thomas) (Entered: 10/23/2009)
10/23/2009	<u>272</u>	REPLY to Response to Motion re <u>253</u> Opposed SEALED PATENT MOTION TO EXCLUDE EXPERT TESTIMONY OF EDWARD R. TITTEL filed by Soverain Software LLC. (Shentov, Ognjan) (Entered: 10/23/2009)
10/29/2009	<u>273</u>	SUR-REPLY to Reply to Response to Motion re <u>247</u> SEALED MOTION Defendant's Motion for Partial Summary Judgment of Invalidity of the "Shopping Cart Claims" in U.S. Patents No. 5,715,314 and No. 5,909,492 filed by Soverain Software LLC. (Giannetti, Thomas) (Entered: 10/29/2009)
10/29/2009	<u>274</u>	FILED IN ERROR. PLEASE DISREGARD. ATTORNEY TO REFILE. SEALED PATENT SUR-REPLY to Reply to Response to PATENT Motion re <u>252</u> SEALED MOTION Defendant's Daubert Motion and Supporting Brief to Exclude the Opinions of James Nawrocki filed by Soverain Software LLC. (Tipi, Stela) Modified on 10/30/2009 (gsg). (Entered: 10/29/2009)
10/30/2009	<u>275</u>	SUR-REPLY to Reply to Response to Motion re <u>248</u> SEALED MOTION Defendant's Motion for Summary Judgment of Non-Infringement of U.S. Patent Nos. 7,272,639, 5,715,314, and 5,909,492 filed by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit Golden Hour JMOL Brief, # <u>2</u> Exhibit Golden Hour Opposition, # <u>3</u> Exhibit Golden Hour Final Judgment)(Shentov, Ognjan) (Entered: 10/30/2009)
10/30/2009	<u>276</u>	SEALED PATENT SUR-REPLY to Reply to Response to PATENT Motion re <u>252</u> SEALED MOTION Defendant's Daubert Motion and Supporting Brief to Exclude the Opinions of James Nawrocki filed by Soverain Software LLC. (Smith, Debra) (Entered: 10/30/2009)
11/02/2009	<u>277</u>	SEALED PATENT SUR-REPLY to Reply to Response to PATENT Motion re <u>254</u> Opposed SEALED PATENT MOTION TO EXCLUDE CERTAIN OPINIONS OF W. CHRISTOPHER BAKEWELL filed by Newegg Inc. (Attachments: #(1) Exhibit K)(Yarbrough, Herbert) (Entered: 11/02/2009)
11/02/2009	<u>278</u>	SEALED PATENT SUR-REPLY to Reply to Response to PATENT Motion re <u>243</u> Opposed SEALED MOTION To Strike Portions Of Newegg Damages Expert Report Relying On "Design Around" Memo, Preclude Testimony On Those Portions, And Preclude Newegg From Offering "Design Around" Memo As Evidence filed by Newegg Inc. Attachments: #(1)Exhibit 1, #(2) Exhibit 2)(Yarbrough, Herbert) (Entered: 11/02/2009)
11/03/2009	<u>279</u>	NOTICE of Attorney Appearance by Richard Alan Sayles on behalf of Newegg Inc. (Sayles, Richard) (Entered: 11/03/2009)

11/03/2009	<u>280</u>	NOTICE of Attorney Appearance by Mark Daniel Strachan on behalf of Newegg Inc. (Strachan, Mark) (Entered: 11/03/2009)
11/09/2009	<u>281</u>	ORDER that the parties substantively meet and confer on all limine issues before filing any motions in limine. Motions in limine shall be filed by 1-13-2010 and responses are due by 1-15-2010. The Court also withdraws its general request for any pending motion notebooks or courtesy copies. Signed by Judge Leonard Davis on 11/09/09. cc:attys 11-09-09(mll,) (Entered: 11/09/2009)
11/12/2009	<u>282</u>	Unopposed MOTION for Leave to File <i>Supplemental Brief in Support of Its Motion for Summary Judgment of Noninfringement</i> (Dkt. No. 248) by Newegg Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 11/12/2009)
11/17/2009	<u>283</u>	ORDER granting <u>282</u> Motion for Leave to File Supplemental Brief. Signed by Judge Leonard Davis on 11/17/09. cc:attys 11-17-09 (mll,) (Entered: 11/17/2009)
11/17/2009	<u>284</u>	Joint MOTION for Extension of Time for Parties to Exchange Trial Exhibits by Soverain Software LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Smith, Michael) (Entered: 11/17/2009)
11/18/2009	<u>285</u>	ORDER granting <u>284</u> Motion for Extension of Time. The deadline for parties to exchange their trial exhibits is extended to 12-11-2009. Signed by Judge Leonard Davis on 11/18/09. cc:attys 11-18-09 (mll,) (Entered: 11/18/2009)
11/18/2009	<u>286</u>	APPLICATION to Appear Pro Hac Vice by Attorney Daniel H Brean for Newegg Inc. (mll,) (Entered: 11/18/2009)
11/20/2009	<u>287</u>	MOTION in Limine to <i>Preclude the Testimony of Alexander Trevor at Trial</i> by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Giannetti, Thomas) (Entered: 11/20/2009)
11/24/2009	<u>288</u>	Filed in Error. Please Disregard. To be Refiled by Attorney. Proposed Pretrial Order (<i>Joint</i>) by Soverain Software LLC, Newegg Inc.. (Attachments: # <u>1</u> Exhibit 1 – Plaintiff's Witness List, # <u>2</u> Exhibit 2 – Defendant's Witness List, # <u>3</u> Exhibit 3 – Plaintiff's Proposed Jury Instructions, # <u>4</u> Exhibit 4 – Defendant's Proposed Jury Instructions, # <u>5</u> Exhibit 5 – Plaintiff's Proposed Verdict Form, # <u>6</u> Exhibit 6 – Defendant's Proposed Verdict Form)(Smith, Michael) Changed one word for Exhibit 2 from exhibit to witness. Modified on 11/25/2009 (mjc,). Modified on 11/25/2009 (gsg). (Entered: 11/24/2009)
11/25/2009	<u>289</u>	Corrects Entry <u>288</u> Proposed Pretrial Order (<i>Joint</i>) by Soverain Software LLC, Newegg Inc.. (Attachments: # <u>1</u> Exhibit 1 – Plaintiff's Witness List, # <u>2</u> Exhibit 2 – Defendant's Witness List, # <u>3</u> Exhibit 3 – Plaintiff's Proposed Jury Instructions, # <u>4</u> Exhibit 4 – Defendant's Proposed Jury Instructions, # <u>5</u> Exhibit 5 – Plaintiff's Proposed Verdict Form, # <u>6</u> Exhibit 6 – Defendant's Proposed Verdict Form)(Smith, Michael) Modified on 11/25/2009 (gsg). (Entered: 11/25/2009)
11/27/2009	<u>290</u>	RESPONSE in Opposition re <u>282</u> Unopposed MOTION for Leave to File <i>Supplemental Brief in Support of Its Motion for Summary Judgment of Noninfringement</i> (Dkt. No. 248)Unopposed MOTION for Leave to File <i>Supplemental Brief in Support of Its Motion for Summary Judgment of Noninfringement</i> (Dkt. No. 248) <i>Soverain's Response to Newegg's Supplemental Brief filed by Soverain Software LLC.</i> (Shentov, Ognjan) (Entered: 11/27/2009)
12/03/2009	<u>291</u>	RESPONSE in Opposition re <u>287</u> MOTION in Limine to <i>Preclude the Testimony of Alexander Trevor at Trial</i> filed by Newegg Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Yarbrough, Herbert) (Entered: 12/03/2009)
12/14/2009	<u>292</u>	REPLY to Response to Motion re <u>287</u> MOTION in Limine to <i>Preclude the Testimony of Alexander Trevor at Trial</i> filed by Soverain Software LLC. (Giannetti, Thomas) (Entered: 12/14/2009)
12/14/2009	<u>293</u>	NOTICE by Soverain Software LLC of <i>Compliance with Paragraphs 6(B) and 6(C) of the Discovery Order</i> (Giannetti, Thomas) (Entered: 12/14/2009)

12/14/2009	<u>294</u>	NOTICE by Sovereign Software LLC of <i>Request for Daily Transcripts and Real Time Reporting of Trial Proceedings</i> (Giannetti, Thomas) (Entered: 12/14/2009)
12/15/2009	<u>295</u>	NOTICE of Disclosure by Newegg Inc. (Sayles, Richard) (Entered: 12/15/2009)
12/21/2009	<u>296</u>	SUR-REPLY to Reply to Response to Motion re <u>287</u> MOTION in Limine to <i>Preclude the Testimony of Alexander Trevor at Trial</i> filed by Newegg Inc.. (Yarbrough, Herbert) (Entered: 12/21/2009)
12/23/2009	<u>297</u>	NOTICE of Disclosure by Sovereign Software LLC of <i>Compliance with Paragraph 2(A) of the Discovery Order</i> (Giannetti, Thomas) (Entered: 12/23/2009)
12/29/2009	<u>298</u>	NOTICE of Disclosure by Newegg Inc. re: <i>Rebuttal Deposition Designation</i> (Sayles, Richard) (Entered: 12/29/2009)
01/04/2010	<u>299</u>	NOTICE of Disclosure by Sovereign Software LLC of <i>Compliance with Paragraph 2(A) of the Discovery Order</i> (Giannetti, Thomas) (Entered: 01/04/2010)
01/05/2010	<u>300</u>	NOTICE of Disclosure by Newegg Inc. Re: <i>Objections to Rebuttal Deposition Designations</i> (Sayles, Richard) (Entered: 01/05/2010)
01/09/2010	<u>301</u>	NOTICE of Disclosure by Sovereign Software LLC <i>Notice of Compliance</i> (Giannetti, Thomas) (Entered: 01/09/2010)
01/11/2010	<u>302</u>	NOTICE of Disclosure by Newegg Inc. Re: <i>Objections to Plaintiff's Exhibits</i> (Sayles, Richard) (Entered: 01/11/2010)
01/11/2010	<u>303</u>	Agreed MOTION for Leave to File Excess Pages for <i>Motion in Limine Briefing</i> by Sovereign Software LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Giannetti, Thomas) (Entered: 01/11/2010)
01/13/2010	<u>304</u>	ORDER granting <u>303</u> Motion for Leave to File Excess Pages with Respect to Motion in Limine Briefing. Signed by Judge Leonard Davis on 01/13/10. cc:attys 1-13-10(mll,) (Entered: 01/13/2010)
01/13/2010	<u>305</u>	MOTION in Limine <i>Sovereign's Motions in Limine Nos. 1 - 29</i> by Sovereign Software LLC. (Attachments: # <u>1</u> Attachment 1: Brief in Support of Sovereign's Motion in Limine No. 20, # <u>2</u> Attachment 2: Brief in Support of Sovereign's Motion in Limine No. 22, # <u>3</u> Attachment 3: Brief in Support of Sovereign's Motion in Limine No. 23, # <u>4</u> Text of Proposed Order)(Giannetti, Thomas) (Entered: 01/13/2010)
01/13/2010	<u>306</u>	Opposed SEALED PATENT MOTION <i>In Limine</i> by Newegg Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Text of Proposed Order)(Sayles, Richard) (Entered: 01/13/2010)
01/14/2010	<u>307</u>	NOTICE of Attorney Appearance by Claudia Wilson Frost on behalf of Newegg Inc. (Frost, Claudia) (Entered: 01/14/2010)
01/15/2010	<u>308</u>	NOTICE of Attorney Appearance by Jeremy Jason Gaston on behalf of Newegg Inc. (Gaston, Jeremy) (Entered: 01/15/2010)
01/15/2010	<u>309</u>	RESPONSE in Opposition re <u>306</u> Opposed SEALED PATENT MOTION <i>In Limine</i> filed by <i>Sovereign Software LLC</i> . (Giannetti, Thomas) (Entered: 01/15/2010)
01/15/2010	<u>310</u>	SEALED PATENT RESPONSE to SEALED PATENT MOTION re <u>305</u> MOTION in Limine <i>Sovereign's Motions in Limine Nos. 1 - 29</i> filed by <i>Newegg Inc.</i> . (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Text of Proposed Order)(Sayles, Richard) (Entered: 01/15/2010)
01/19/2010	<u>311</u>	NOTICE by Sovereign Software LLC <i>Plaintiff Sovereign Software LLC's Trial Time Requests</i> (Giannetti, Thomas) (Entered: 01/19/2010)
01/19/2010	<u>312</u>	Joint MOTION Submission of Juror Questionnaire by Sovereign Software LLC. (Attachments: # <u>1</u> [Proposed] Joint Juror Questionnaire, # <u>2</u> Text of Proposed Order [Proposed] Order for Joint Juror Questionnaire)(Giannetti, Thomas) (Entered: 01/19/2010)

01/19/2010	<u>313</u>	NOTICE by Newegg Inc. <i>Defendant Newegg Inc.'s Estimate of Time</i> (Sayles, Richard) (Entered: 01/19/2010)
01/21/2010	<u>322</u>	1.21.2010 Minute Entry (Pretrial): for proceedings held before Judge Leonard Davis: Final Pretrial Conference held on 1/21/2010. (Court Reporter Shea Sloan.) (rlf,) (Entered: 02/05/2010)
01/23/2010	<u>314</u>	NOTICE by Newegg Inc. <i>of Compliance with 35 USC 282</i> (Yarbrough, Herbert) (Entered: 01/23/2010)
01/25/2010	<u>315</u>	ORDER denying <u>221</u> Motion for Summary Judgment; denying as moot <u>242</u> Motion to Strike and Preclude Expert Trial Testimony and Evidence; denying <u>243</u> Sealed Motion to Strike Portions of Newegg's Damages Expert Report; denying <u>247</u> Sealed Motion for Partial Summary Judgment; denying <u>252</u> Sealed Motion to Exclude the Opinions of James Nawrocki; denying <u>253</u> Sealed Patent Motion to Exclude Expert Testimony of Edward R Tittel; denying <u>254</u> Sealed Patent Motion to Exclude Certain Opinions of W Christopher Bakewell; denying <u>287</u> Motion in Limine; granting <u>312</u> Motion Requesting Submission of a Juror Questionnaire: The first page of instructions will be read aloud to the potential jurors and the second page of questions will be handed to and filled out by the potential jurors prior to voir dire. The Court CARRIES <u>230</u> Motion for Partial Summary Judgment; and CARRIES <u>248</u> Motion for Summary Judgment. The Court GRANTS in part, DENIES in part and CARRIES in part <u>305</u> Motion in Limine; and CARRIES <u>306</u> Motion in Limine. The parties shall meet and confer on all motions in limine not ruled on and notify the Court of any issues that need to be resolved by 1-28-2010. If parties cannot resolve all the issues, the Court will hear them before jury selection on 2-01-2010. Parties shall meet and confer on the Court's Charge and submit a proposed Charge to the Court by 2-03-2010. The Court will allow the parties 30 minutes for voir dire, 30 minutes for opening statements, 12 hours for direct and cross examinations, and 60 minutes for closing arguments. Signed by Judge Leonard Davis on 01/25/10. cc:attys 1-25-10 (mll,) (Entered: 01/25/2010)
01/26/2010	<u>316</u>	ORDER that this case is set for jury trial on February 1-2, 2010; February 8-9, 2010; and February 16-17, 2010. Trial will commence immediately following jury selection on 2-01-2010. Signed by Judge Leonard Davis on 01/26/10. cc:attys 1-26-10(mll,) (Entered: 01/26/2010)
01/27/2010	<u>317</u>	Joint MOTION to Continue <i>the Trial Date</i> by Sovereign Software LLC. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order, # <u>2</u> Supplement Declaration of Michael Ian Shamos)(Adamo, Kenneth) (Entered: 01/27/2010)
01/27/2010	<u>318</u>	ORDER granting <u>317</u> Motion to Continue Trial Date. The Court sets this case for jury selection on 4-19-2010 at 9:00 a.m., with trial to commence on 4-26-2010 at 9:00 a.m. Signed by Judge Leonard Davis on 01/27/10. cc:attys 1-28-10 (mll,) (Entered: 01/28/2010)
01/27/2010		Jury Selection reset for 4/19/2010 09:00AM before Judge Leonard Davis. Jury Trial reset for 4/26/2010 09:00 AM before Judge Leonard Davis. (per <u>318</u> Order) (mll,) (Entered: 01/28/2010)
01/28/2010	<u>319</u>	Agreed MOTION To Substitute Prior Order of Dismissal Without Prejudice with Order of Dismissal With Prejudice by Sovereign Software LLC. (Attachments: # <u>1</u> Text of Proposed Order Order of Dismissal with Prejudice)(Giannetti, Thomas) (Entered: 01/28/2010)
01/28/2010	<u>320</u>	NOTICE by Sovereign Software LLC <i>of Joint Certificate of Conference in Compliance with the Court's Order to Meet and Confer on the Parties' Motions in Limine</i> (Satine, Barry) (Entered: 01/28/2010)
01/29/2010	<u>321</u>	ORDER granting <u>319</u> Motion to Dismiss with Prejudice. Pltf's complaint against Zappos is now dismissed with prejudice. Zappos's counterclaims against pltf are now dismissed with prejudice. Each party shall bear its own attys' fees, expenses and costs. Signed by Judge Leonard Davis on 01/29/10. cc:attys 1-29-10 (mll,) (Entered: 01/29/2010)
02/15/2010	<u>323</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Pretrial Conference held on 1/21/10 before Judge Leonard Davis. Court Reporter: Shea Sloan, shea_sloan@txed.uscourts.gov. 90 pages.

		<p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 3/11/2010. Redacted Transcript Deadline set for 3/22/2010. Release of Transcript Restriction set for 5/19/2010. (sms,) (Entered: 02/15/2010)</p>
03/01/2010	<u>324</u>	Emergency SEALED MOTION <i>Emergency Opposed Motion to Disqualify Jones Day</i> by Newegg Inc.. (Attachments: # <u>1</u> Exhibit A – Declaration of Lee Cheng, # <u>2</u> Exhibit B – Declaration of Mira Wolff, # <u>3</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 03/01/2010)
03/02/2010	<u>325</u>	ORDER re <u>324</u> Emergency SEALED MOTION <i>Emergency Opposed Motion to Disqualify Jones Day</i> filed by Newegg Inc. Response to Motion is due 3–05–2010 at 12:00 p.m. Reply is due 3–08–2010 at 12:00 p.m. Surreply is due 3–09–2010 at 8:00 a.m. Signed by Judge Leonard Davis on 03/02/10. cc:attys 3–02–10(mll,) (Entered: 03/02/2010)
03/04/2010	<u>326</u>	Opposed MOTION to Strike <i>The Belatedly–Produced CompuServe Documents, The CompuServe Manuals As Corroborating Evidence, And Trevor's Uncorroborated Testimony</i> by Soverain Software LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Giannetti, Thomas) (Entered: 03/04/2010)
03/05/2010	<u>327</u>	SEALED RESPONSE to Motion re <u>324</u> Emergency SEALED MOTION <i>Emergency Opposed Motion to Disqualify Jones Day</i> filed by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit A Declaration of Mark A. Finkelstein, # <u>2</u> Exhibit 1 to the Declaration of Mark A. Finkelstein, # <u>3</u> Exhibit 2 to the Declaration of Mark A. Finkelstein, # <u>4</u> Exhibit 3 to the Declaration of Mark A. Finkelstein, # <u>5</u> Exhibit 4 to the Declaration of Mark A. Finkelstein, # <u>6</u> Exhibit 5 to the Declaration of Mark A. Finkelstein, # <u>7</u> Exhibit 6 to the Declaration of Mark A. Finkelstein, # <u>8</u> Exhibit 7 to the Declaration of Mark A. Finkelstein, # <u>9</u> Exhibit 8 to the Declaration of Mark A. Finkelstein (See # <u>27</u> Replacement Exhibit), # <u>10</u> Exhibit B Declaration of Marc K. Callahan, # <u>11</u> Exhibit 1 to the Declaration of Marc K. Callahan, # <u>12</u> Exhibit 2 to the Declaration of Marc K. Callahan, # <u>13</u> Exhibit 3 to the Declaration of Marc K. Callahan, # <u>14</u> Exhibit 4 to the Declaration of Marc K. Callahan, # <u>15</u> Exhibit 5 to the Declaration of Marc K. Callahan, # <u>16</u> Exhibit 6 to the Declaration of Marc K. Callahan, # <u>17</u> Exhibit 7 to the Declaration of Marc K. Callahan, # <u>18</u> Exhibit 8 to the Declaration of Marc K. Callahan, # <u>19</u> Exhibit 9 to the Declaration of Marc K. Callahan, # <u>20</u> Exhibit 10 to the Declaration of Marc K. Callahan, # <u>21</u> Exhibit C Katharine A. Wolanyk Declaration, # <u>22</u> Exhibit D Kenneth R. Adamo Declaration, # <u>23</u> Exhibit E Thomas L. Giannetti Declaration, # <u>24</u> Exhibit F Barry R. Satine Declaration, # <u>25</u> Exhibit G Jennifer Seraphine Declaration, # <u>26</u> Exhibit H Ognjan V. Shentov Declaration)(Adamo, Kenneth) (Additional attachment(s) added on 3/9/2010: # <u>27</u> Exhibit 8 to the Declaration of Mark A. Finkelstein) (mll,). Modified on 3/9/2010 per <u>336</u> Order (mll,). (Entered: 03/05/2010)
03/05/2010	<u>328</u>	Unopposed MOTION for Leave to File Excess Pages by Soverain Software LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Smith, Michael) (Entered: 03/05/2010)
03/05/2010	<u>329</u>	Unopposed SEALED MOTION <i>To Enter Substitute Exhibit 8 to Declaration of Mark A. Finkelstein</i> by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit 8 to the Declaration of Mark A. Finkelstein, # <u>2</u> Text of Proposed Order)(Satine, Barry) (Entered: 03/05/2010)
03/08/2010	<u>330</u>	SEALED REPLY to Response to Motion re <u>324</u> Emergency SEALED MOTION <i>Emergency Opposed Motion to Disqualify Jones Day</i> filed by Newegg Inc.. (Yarbrough, Herbert) (Entered: 03/08/2010)
03/08/2010	<u>331</u>	ORDER granting <u>328</u> Motion for Leave to File Excess Pages. Signed by Judge Leonard Davis on 03/08/10. cc:attys 3–08–10 (mll,) (Entered: 03/08/2010)

03/08/2010	<u>332</u>	Unopposed MOTION for Leave to File Excess Pages on <i>Newegg's Reply in Support of Motion to Disqualify Jones Day</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 03/08/2010)
03/08/2010	<u>333</u>	Unopposed MOTION for Leave to File Excess Pages for <i>Soverain's surreply to Newegg's Emergency Opposed Motion to Disqualify Jones Day</i> by Soverain Software LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Giannetti, Thomas) (Entered: 03/08/2010)
03/09/2010	<u>334</u>	SEALED SURREPLY in Support of Soverain's RESPONSE to Motion re <u>324</u> Emergency SEALED MOTION <i>Emergency Opposed Motion to Disqualify Jones Day</i> filed by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit I)(Adamo, Kenneth) (Entered: 03/09/2010)
03/09/2010	<u>335</u>	ORDER Setting Hearing on Motion <u>324</u> Emergency SEALED MOTION <i>Emergency Opposed Motion to Disqualify Jones Day</i> : Motion Hearing set for 3/17/2010 01:30 PM before Judge Leonard Davis. Signed by Judge Leonard Davis on 03/09/10. cc:attys 3-09-10(mll,) (Entered: 03/09/2010)
03/09/2010	<u>336</u>	ORDER granting <u>329</u> Sealed Motion to Substitute Exhibit. Signed by Judge Leonard Davis on 03/08/10. cc:attys 3-09-10 (mll,) Modified on 3/9/2010 (mll,). (Entered: 03/09/2010)
03/09/2010	<u>337</u>	ORDER granting <u>332</u> Motion for Leave to File Excess Pages. Signed by Judge Leonard Davis on 03/08/10. cc:attys 3-09-10 (mll,) (Entered: 03/09/2010)
03/09/2010	<u>338</u>	ORDER granting <u>333</u> Motion for Leave to File Excess Pages. Signed by Judge Leonard Davis on 03/09/10. cc:attys 3-09-10 (mll,) (Entered: 03/09/2010)
03/10/2010	<u>339</u>	ORDER re <u>335</u> Order Setting Hearing on Motion. The Court expects the principal declarants to be present and available for direct and cross examination regarding their declarations. Parties are directed to meet and confer in person or telephone to determine if either party expects any other declarants to be present and available to testify at the evidentiary hearing. Should any disputes arise, parties shall notify the Court by 3-12-2010 at 12:00 p.m. Signed by Judge Leonard Davis on 03/10/10. cc:attys 3-10-10(mll,) (Entered: 03/10/2010)
03/11/2010	<u>340</u>	APPLICATION to Appear Pro Hac Vice by Attorney Thomas Demitrack for Soverain Software LLC. (mll,) (Entered: 03/11/2010)
03/12/2010	<u>341</u>	APPLICATION to Appear Pro Hac Vice by Attorney George T Manning for Soverain Software LLC. (mll,) (Entered: 03/12/2010)
03/15/2010	<u>342</u>	Sealed Document – Joint Stipulation Regarding Evidentiary Hearing on Attorney Disqualification Issue. (Frost, Claudia) (Entered: 03/15/2010)
03/16/2010	<u>343</u>	NOTICE by Soverain Software LLC of <i>Compliance with Plaintiff's Objections to Newegg's Supplemental and Second Supplemental Exhibit Lists</i> (Giannetti, Thomas) (Entered: 03/16/2010)
03/17/2010	<u>349</u>	3.17.10 Minute Entry(Evidentiary Hrg): for proceedings held before Judge Leonard Davis: Motion Hearing held on 3/17/2010 re <u>324</u> Emergency SEALED MOTION <i>Emergency Opposed Motion to Disqualify Jones Day</i> filed by Newegg Inc.. (Court Reporter Shea Sloan.) (rlf,) (Entered: 03/24/2010)
03/18/2010	<u>344</u>	ORDER REGARDING EXHIBITS. Signed by Judge Leonard Davis on 03/17/10. cc:attys 3-18-10(mll,) (Entered: 03/18/2010)
03/18/2010	<u>345</u>	MEMORANDUM OPINION AND ORDER denying re <u>324</u> Emergency SEALED MOTION <i>Emergency Opposed Motion to Disqualify Jones Day</i> filed by Newegg Inc. Signed by Judge Leonard Davis on 3/18/2010. (kls,) (Entered: 03/19/2010)
03/19/2010	<u>346</u>	SEALED RESPONSE to Motion re <u>326</u> Opposed MOTION to Strike The Belatedly-Produced CompuServe Documents, The CompuServe Manuals As Corroborating Evidence, And Trevor's Uncorroborated Testimony filed by Newegg Inc.(Attachments: #(1) Exhibit A, #(2) Exhibit B, #(3) Exhibit C, #(4) Exhibit D, #(5) Exhibit E)(Yarbrough, Herbert) (Entered: 03/19/2010)

03/24/2010	<u>347</u>	Exhibit List: Plaintiff's Exhibits Admitted During 3.17.10 Hearing. (rlf,) (Entered: 03/24/2010)
03/24/2010	<u>348</u>	Exhibit List: Defendant Newegg's Exhibits Admitted During 3.17.10 Hearing. (rlf,) (Entered: 03/24/2010)
03/26/2010	<u>350</u>	SEALED REPLY to Opposition <u>346</u> to Opposed Motion <u>326</u> to Strike <i>The Belatedly-Produced CompuServe Documents, The CompuServe Manuals As Corroborating Evidence, And Trevor's Uncorroborated Testimony</i> filed by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit 1 - Shamos Tr., # <u>2</u> Exhibit 2 - Trevor Tr.)(Giannetti, Thomas) (Entered: 03/26/2010)
04/05/2010	<u>351</u>	SEALED PATENT SUR-REPLY to Reply to Response to PATENT Motion re <u>326</u> Opposed MOTION to Strike <i>The Belatedly-Produced CompuServe Documents, The CompuServe Manuals As Corroborating Evidence, And Trevor's Uncorroborated Testimony</i> filed by Newegg Inc. (Attachments: #(1) Exhibit A, #(2) Exhibit B)(Yarbrough, Herbert) (Entered: 04/05/2010)
04/14/2010		E-NOTICE of Hearing on Motion <u>306</u> Opposed SEALED PATENT MOTION <i>In Limine</i> , <u>326</u> Opposed MOTION to Strike <i>The Belatedly-Produced CompuServe Documents, The CompuServe Manuals As Corroborating Evidence, And Trevor's Uncorroborated Testimony</i> , <u>305</u> MOTION in <i>Limine Soverain's Motions in Limine Nos. 1 - 29 : Motion Hearing set for 4/19/2010 immediately after Jury Selection before Judge Leonard Davis.</i> (rlf,) (Entered: 04/14/2010)
04/14/2010	<u>352</u>	ORDER for the parties to meet, confer and submit a proposed Charge to the Court by 4/21/2010. Signed by Judge Leonard Davis on 4/14/10. (mjc,) (Entered: 04/14/2010)
04/16/2010	<u>353</u>	ORDER that parties meet and confer on a claim construction chart to be submitted to the jurors and for use at trial containing the Court's constructions of the terms in the 314, 492, and 639 patents. Signed by Judge Leonard Davis on 04/16/10. cc:attys 4-16-10(mll,) (Entered: 04/16/2010)
04/16/2010	<u>354</u>	Proposed Jury Instructions by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit A Joint Proposed Charge of the Court)(Giannetti, Thomas) (Entered: 04/16/2010)
04/19/2010	<u>355</u>	4.19.10 Minute Entry (Jury Selection): for proceedings held before Judge Leonard Davis: Jury Selection held on 4/19/2010. (Court Reporter Shea Sloan.) (rlf,) (Entered: 04/19/2010)
04/19/2010	<u>356</u>	Sealed Document. Jury Questionnaires (Pages 1-8) (Attachments: # <u>1</u> - Questionnaires (Pages 8-17), # <u>2</u> - Questionnaires (Pages 18-25))(rlf,) (Entered: 04/19/2010)
04/19/2010	<u>357</u>	4.19.10 Minute Entry (Motion Hearing): for proceedings held before Judge Leonard Davis: Motion Hearing held on 4/19/2010 re <u>306</u> Opposed SEALED PATENT MOTION <i>In Limine</i> filed by Newegg Inc., <u>305</u> MOTION in <i>Limine Soverain's Motions in Limine Nos. 1 - 29</i> filed by Soverain Software LLC, <u>326</u> Opposed MOTION to Strike <i>The Belatedly-Produced CompuServe Documents, The CompuServe Manuals As Corroborating Evidence, And Trevor's Uncorroborated Testimony</i> filed by Soverain Software LLC. (Court Reporter Shea Sloan.) (rlf,) (Entered: 04/19/2010)
04/20/2010	<u>358</u>	ORDER granting in part and denying in part <u>326</u> Motion to Exclude the <i>Belatedly-Produced CompuServe Documents, the CompuServe Manuals as Corroborating Evidence, and Trevor's Uncorroborated Testimony</i> ; granting in part and denying in part <u>305</u> Motion in <i>Limine</i> — GRANTED as to matters 1,9, 14, and 15; DENIED as to matters 8, 12, and 13; denying <u>306</u> Sealed Patent Motion in <i>Limine</i> as to matter 2. Signed by Judge Leonard Davis on 04/20/10. cc:attys 4-20-10 (mll,) (Entered: 04/20/2010)
04/21/2010	<u>359</u>	JOINT SUBMISSION OF CLAIM CONSTRUCTION CHART filed by Soverain Software LLC. (Attachments: Exhibit A: Claim Construction Chart)(Giannetti, Thomas) (Entered: 04/21/2010)
04/21/2010	<u>360</u>	Proposed Jury Instructions by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit A: REVISED JOINT PROPOSED CHARGE OF THE COURT)(Giannetti,

		Thomas) (Entered: 04/21/2010)
04/26/2010	<u>361</u>	4.26.10 Minute Entry (Jury Trial – Day 1): for proceedings held before Judge Leonard Davis: Jury Trial held on 4/26/2010. (Court Reporter Judy Werlinger.) (rlf,) (Entered: 04/26/2010)
04/27/2010	<u>362</u>	4.27.10 Minute Entry (Jury Trial – Day 2): for proceedings held before Judge Leonard Davis: Jury Trial held on 4/27/2010. (Court Reporter Judy Werlinger.) (rlf,) (Entered: 04/27/2010)
04/28/2010	<u>363</u>	TRIAL BRIEF <i>Soverain's Memorandum in Support of Admitting Summary Charts and Slides Prepared by Soverain's Expert Jack Grimes</i> by Soverain Software LLC. (Adamo, Kenneth) (Entered: 04/28/2010)
04/28/2010	<u>372</u>	4.28.10 Minute Entry (Jury Trial – Day 3): for proceedings held before Judge Leonard Davis: Jury Trial held on 4/28/2010. (Court Reporter Judy Werlinger.) (rlf,) (Entered: 04/30/2010)
04/29/2010	<u>364</u>	MOTION to Strike <i>The Trevor Trial Testimony</i> by Soverain Software LLC. (Adamo, Kenneth) (Additional attachment(s) added on 5/5/2010: # <u>1</u> Text of Proposed Order) (mjc,). (Entered: 04/29/2010)
04/29/2010	<u>365</u>	TRIAL BRIEF <i>Regarding Noninfringing Alternatives</i> by Newegg Inc.. (Strachan, Mark) (Entered: 04/29/2010)
04/29/2010	<u>366</u>	MOTION for Judgment as a Matter of Law by Soverain Software LLC. (Adamo, Kenneth) (Additional attachment(s) added on 5/5/2010: # <u>1</u> Text of Proposed Order) (kls,). (Entered: 04/29/2010)
04/29/2010	<u>367</u>	MOTION for Judgment as a Matter of Law <i>on Non-Infringement</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Strachan, Mark) (Entered: 04/29/2010)
04/29/2010	<u>368</u>	MOTION for Judgment as a Matter of Law <i>on Invalidity</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Strachan, Mark) (Entered: 04/29/2010)
04/29/2010	<u>369</u>	MOTION for Judgment as a Matter of Law <i>on Damages</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Strachan, Mark) (Entered: 04/29/2010)
04/29/2010	<u>370</u>	***DISREGARD ENTRY – FILED IN ERROR – TO BE REFILED*** MOTION for Judgment as a Matter of Law , <i>Supplemental Brief in Suport of</i> , by Soverain Software LLC. (Adamo, Kenneth) Modified on 4/30/2010 (kls,). (Entered: 04/29/2010)
04/29/2010	<u>371</u>	Proposed Jury Instructions by Newegg Inc.. (Strachan, Mark) (Entered: 04/29/2010)
04/29/2010	<u>373</u>	4.29.10 Minute Entry (Jury Trial – Day 4): for proceedings held before Judge Leonard Davis: Jury Trial held on 4/29/2010. (Court Reporter Judy Werlinger.) (rlf,) (Entered: 04/30/2010)
04/30/2010		***FILED IN ERROR. Document #370 Brief filed as Motion PLEASE IGNORE.*** (kls,) (Entered: 04/30/2010)
04/30/2010	<u>374</u>	4.30.2010 Minute Entry (Jury Trial – Day 5): for proceedings held before Judge Leonard Davis: Jury Trial completed on 4/30/2010. (Court Reporter Judy Werlinger.) (rlf,) (Entered: 04/30/2010)
04/30/2010	<u>375</u>	SEALED Jury Notes. (rlf,) (Entered: 04/30/2010)
04/30/2010	<u>376</u>	JURY VERDICT. (rlf,) (Entered: 04/30/2010)
04/30/2010	<u>377</u>	Sealed Document. JURY VERDICT IN ITS ENTIRETY. (rlf,) (Entered: 04/30/2010)
04/30/2010	<u>378</u>	ORDER denying <u>364</u> Motion to Strike <u>364</u> MOTION to Strike <i>The Trevor Trial Testimony</i> . Signed by Judge Leonard Davis on 4/30/2010. (gsg) (Entered: 04/30/2010)

04/30/2010	<u>379</u>	BRIEF filed <i>Supplemental Brief in Support of Motion for Judgment as a Matter of Law</i> by Sovereign Software LLC. (Adamo, Kenneth) Modified on 5/5/2010 (kls,).*** (Corrects Entry #370) (Entered: 04/30/2010)
04/30/2010	<u>436</u>	Jury Instructions. (rlf,) (Entered: 08/24/2010)
05/06/2010	<u>380</u>	Exhibit Lists Filed by Sovereign Software LLC during Jury Trial (4.26.2010 – 4.30.2010): Main Document: Plaintiff's Exhibit List 1A Attachments: # <u>1</u> – Plaintiff's Exhibit List 1B; # <u>2</u> – Plaintiff's Exhibit List 2; # <u>3</u> – Plaintiff's Exhibit List 3; # <u>4</u> – Plaintiff's Exhibit List – Final)(rlf,) (Entered: 05/06/2010)
05/06/2010	<u>381</u>	Exhibit List Filed by Newegg Inc. during Trial (4.26.2010 – 4.30.2010): Main Document: Defendant's Exhibit List 1 Attachments: # <u>1</u> – Defendant's Exhibit List 2; # <u>2</u> – Defendant's Exhibit List 3; # <u>3</u> – Defendant's Exhibit List – Final)(rlf,) (Entered: 05/06/2010)
05/06/2010	<u>382</u>	ORDER that all post-verdict motions be filed by 5-24-2010; responses by 6-07-2010; replies by 6-14-2010; and surreplies by 6-21-2010. The Court sets all post verdict motions for hearing on 6-29-2010 at 9:00 a.m. Signed by Judge Leonard Davis on 05/06/10. cc:attys 5-07-10(mll,) (Entered: 05/07/2010)
05/06/2010		Post-Verdict Motion Hearing set for 6/29/2010 09:00 AM before Judge Leonard Davis. (mll,) (Entered: 05/07/2010)
05/06/2010	<u>383</u>	ORDER appointing Mike Patterson as Mediator in this case. The mediation session should be conducted before 5-24-2010. Signed by Judge Leonard Davis on 05/06/10. cc:attys 5-07-10(mll,) (Entered: 05/07/2010)
05/06/2010	<u>384</u>	ORDER granting in part and denying in part <u>366</u> Motion for Judgment as a Matter of Law; denying <u>367</u> Motion for Judgment as a Matter of Law; denying <u>368</u> Motion for Judgment as a Matter of Law; denying <u>369</u> Motion for Judgment as a Matter of Law. Signed by Judge Leonard Davis on 05/06/10. cc:attys 5-07-10(mll,) (Entered: 05/07/2010)
05/07/2010	<u>385</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Voir Dire Proceedings held on 4/19/10 before Judge Leonard Davis. Court Reporter: Shea Sloan, shea_sloan@txed.uscourts.gov. 73 pages. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/1/2010. Redacted Transcript Deadline set for 6/10/2010. Release of Transcript Restriction set for 8/9/2010. (sms,) (Entered: 05/07/2010)
05/07/2010	<u>386</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Motion Hearing Proceedings held on 4/19/10 before Judge Leonard Davis. 58 pages. Court Reporter: Shea Sloan, shea_sloan@txed.uscourts.gov. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov

		Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/1/2010. Redacted Transcript Deadline set for 6/10/2010. Release of Transcript Restriction set for 8/9/2010. (sms,) (Entered: 05/07/2010)
05/07/2010	<u>387</u>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Evidentiary Hearing Proceedings held on 3/17/10 before Judge Leonard Davis. Court Reporter: Shea Sloan, shea_sloan@txed.uscourts.gov. 39 pages.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/1/2010. Redacted Transcript Deadline set for 6/10/2010. Release of Transcript Restriction set for 8/9/2010. (sms,) (Entered: 05/07/2010)</p>
05/07/2010	<u>388</u>	Proceedings held on 3/17/10 before Leonard Davis – Sealed Portion of the Transcript. (sms,) (Entered: 05/07/2010)
05/13/2010	<u>389</u>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 4/26/10 Morning Session before Judge Leonard Davis. Court Reporter/Transcriber: Shea Sloan/J Werlinger, Telephone number: 903/590-1171. <P>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov<P> Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/7/2010. Redacted Transcript Deadline set for 6/16/2010. Release of Transcript Restriction set for 8/16/2010. (lss,) (Entered: 05/13/2010)</p>
05/13/2010	<u>390</u>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 4/26/10 Afternoon Session before Judge Leonard Davis. Court Reporter/Transcriber: S. Sloan/J. Werlinger, Telephone number: 903/590-1171. <P>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov<P> Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/7/2010. Redacted Transcript Deadline set for 6/16/2010. Release of Transcript Restriction set for 8/16/2010. (lss,) (Entered: 05/13/2010)</p>
05/13/2010	<u>391</u>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 4/27/10 Morning Session before Judge Leonard Davis. Court Reporter/Transcriber: Shea Sloan/J. Werlinger, Telephone number: 903/590-1171. <P>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov<P> Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/7/2010. Redacted Transcript Deadline set for 6/16/2010. Release of Transcript</p>

		Restriction set for 8/16/2010. (lss,) (Entered: 05/13/2010)
05/13/2010	<u>392</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 4/27/10 Afternoon Session before Judge Leonard Davis. Court Reporter/Transcriber: Shea Sloan/J. Werlinger, Telephone number: 903/590-1171. <P>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov <P> Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/7/2010. Redacted Transcript Deadline set for 6/16/2010. Release of Transcript Restriction set for 8/16/2010. (lss,) (Entered: 05/13/2010)
05/13/2010	<u>393</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 4/28/10 Morning Session before Judge Leonard Davis. Court Reporter/Transcriber: Shea Sloan/J. Werlinger, Telephone number: 903/590-1171. <P>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov <P> Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/7/2010. Redacted Transcript Deadline set for 6/16/2010. Release of Transcript Restriction set for 8/16/2010. (lss,) (Entered: 05/13/2010)
05/13/2010	<u>394</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 4/29/10 Morning Session before Judge Leonard Davis. Court Reporter/Transcriber: Shea Sloan/J. Werlinger, Telephone number: 903/590-1171. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/7/2010. Redacted Transcript Deadline set for 6/16/2010. Release of Transcript Restriction set for 8/16/2010. (lss,) (Entered: 05/13/2010)
05/13/2010	<u>395</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 4/30/10 before Judge Leonard Davis. Court Reporter/Transcriber: Shea Sloan/J. Werlinger, Telephone number: 903/590-1171. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/7/2010. Redacted Transcript Deadline set for 6/16/2010. Release of Transcript Restriction set for 8/16/2010. (lss,) (Entered: 05/13/2010)
05/13/2010	<u>396</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Trial Proceedings held on 4/28/10 - Afternoon Session before Judge Leonard Davis. Court Reporter: Shea Sloan/Judy Werlinger, Telephone number: 903-590-1171.

		<p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/7/2010. Redacted Transcript Deadline set for 6/16/2010. Release of Transcript Restriction set for 8/16/2010. (sms,) (Entered: 05/13/2010)</p>
05/13/2010	<u>397</u>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Trial Proceedings held on 4/29/10- Afternoon Session before Judge Leonard Davis. Court Reporter: Shea Sloan/Judy Werlinger, Telephone number: 903-590-1171.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 6/7/2010. Redacted Transcript Deadline set for 6/16/2010. Release of Transcript Restriction set for 8/16/2010. (sms,) (Entered: 05/13/2010)</p>
05/19/2010	<u>398</u>	REPORT of Mediation by Michael Philip Patterson. Mediation result: not settled(Patterson, Michael) (Entered: 05/19/2010)
05/20/2010	<u>399</u>	NOTICE by Newegg Inc. <i>Notice of Intent to Request Redaction</i> (Yarbrough, Herbert) (Entered: 05/20/2010)
05/20/2010	<u>400</u>	MOTION for Leave to File Excess Pages by Soverain Software LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Smith, Debra) (Entered: 05/20/2010)
05/21/2010	<u>401</u>	ORDER denying <u>400</u> Motion for Leave to File Excess Pages. Signed by Judge Leonard Davis on 05/21/10. cc:attys 5-21-10 (mll,) (Entered: 05/21/2010)
05/24/2010	<u>402</u>	Opposed SEALED MOTION <i>for Judgment as a Matter of Law of Infringement of the 314, 492, and 639 Patents and for a New Trial on 639 Patent Damages</i> by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit 1 - Grimes testimony, # <u>2</u> Exhibit 2 - P-008, # <u>3</u> Exhibit 3 - P-027A, # <u>4</u> Exhibit 4 - P-038, # <u>5</u> Exhibit 5 - P-062A, # <u>6</u> Exhibit 6 - P-062B, # <u>7</u> Exhibit 7 - Grimes demonstratives, # <u>8</u> Exhibit 8 - Pretrial hearing transcript, # <u>9</u> Exhibit 9 - Tittel testimony, # <u>10</u> Exhibit 10 - P-014, # <u>11</u> Exhibit 11 - P-015, # <u>12</u> Exhibit 12 - P-018, # <u>13</u> Text of Proposed Order Proposed Order)(Adamo, Kenneth) (Entered: 05/24/2010)
05/24/2010	<u>403</u>	SEALED MOTION <i>For an Injunction or, in the Alternative, Ongoing Royalties</i> by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit Exhibit 1, Declaration of K. Wolanyk, # <u>2</u> Exhibit Exhibit 2, Declaration of J. Nawrocki, # <u>3</u> Exhibit Exhibit 3, Trial Testimony of K. Wolanyk, # <u>4</u> Exhibit Exhibit 4, Trial Testimony of C. Bakewell, # <u>5</u> Exhibit Exhibit 5, Trial Testimony of J. Nawrocki, # <u>6</u> Exhibit Exhibit 6, Ex. P-149, # <u>7</u> Exhibit Exhibit 7, Ex. P-245, # <u>8</u> Exhibit Exhibit 8, Ex. P-162, # <u>9</u> Exhibit Exhibit 9, Trial Testimony of S. Ghosh, # <u>10</u> Exhibit Exhibit 10, Trial Testimony of J. Wu, # <u>11</u> Exhibit Exhibit 11, Trial Testimony of L. Cheng, # <u>12</u> Text of Proposed Order)(Adamo, Kenneth) (Entered: 05/24/2010)
05/24/2010	<u>404</u>	SEALED MOTION <i>For Prejudgment Interest and Costs, Post-Verdict Damages to Judgment, and Post-Judgment Interest</i> by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit Grantley v. Clear Channel, Slip Op., # <u>2</u> Text of Proposed Order)(Adamo, Kenneth) (Entered: 05/24/2010)
05/24/2010	<u>405</u>	Agreed MOTION to Redact <u>389</u> Transcript,,, by Newegg Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 05/24/2010)

05/24/2010	<u>406</u>	SEALED MOTION <i>Renewed Motion for Judgment as a Matter of Law on Damages and Alternative Motion for New Trial or Remittitur</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 05/24/2010)
05/24/2010	<u>407</u>	SEALED MOTION <i>Renewed Motions for Judgment as a Matter of Law of Non-Infringement and Invalidity of the Asserted Claims and Alternative Motions for New Trial</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 05/24/2010)
05/25/2010	<u>408</u>	ORDER granting <u>405</u> Motion to Redact re <u>389</u> Transcript. The original page 50 the the transcript of the morning session of the proceedings held before Judge Davis on 4-26-2010 is ordered sealed and that the court reporter shall redact all publicly available versions of the transcript of those proceedings. Signed by Judge Leonard Davis on 05/25/10. cc:attys 5-26-10 (mll,) (Entered: 05/26/2010)
06/07/2010	<u>409</u>	SEALED RESPONSE to Motion re <u>407</u> SEALED MOTION <i>Renewed Motions for Judgment as a Matter of Law of Non-Infringement and Invalidity of the Asserted Claims and Alternative Motions for New Trial</i> filed by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit 1 - Grimes testimony, # <u>2</u> Exhibit 2 - Cheng testimony, # <u>3</u> Exhibit 3 - Trevor testimony, # <u>4</u> Exhibit 4 - Tittel testimony, # <u>5</u> Exhibit 5 - Shamos testimony, # <u>6</u> Exhibit 6 - 42610 AM transcript, # <u>7</u> Exhibit 7 - 43010 transcript, # <u>8</u> Exhibit 8 - P-008, # <u>9</u> Exhibit 9 - P-014, # <u>10</u> Exhibit 10 - P-015, # <u>11</u> Exhibit 11 - P-018, # <u>12</u> Exhibit 12 - P-027A, # <u>13</u> Exhibit 13 - P-038, # <u>14</u> Exhibit 14 - P-062A, # <u>15</u> Exhibit 15 - P-062B, # <u>16</u> Exhibit 16 - Grimes trial demonstratives, # <u>17</u> Exhibit 17 - Amazon claim construction order, # <u>18</u> Exhibit 18 - P-010, # <u>19</u> Exhibit 19 - P-016, # <u>20</u> Exhibit 20 - P-017, # <u>21</u> Exhibit 21 - P-033, # <u>22</u> Exhibit 22 - Golden Hour final judgment, # <u>23</u> Exhibit 23 - 41910 PM pretrial hearing transcript)(Adamo, Kenneth) (Entered: 06/07/2010)
06/07/2010	<u>410</u>	SEALED RESPONSE to Motion re <u>406</u> SEALED MOTION <i>Renewed Motion for Judgment as a Matter of Law on Damages and Alternative Motion for New Trial or Remittitur</i> filed by Soverain Software LLC. (Attachments: # <u>1</u> Exhibit 4/26/10 AM Tr., # <u>2</u> Exhibit 4/26/10 PM Tr., # <u>3</u> Exhibit 4/27/10 AM Tr., # <u>4</u> Exhibit 4/27/10 PM Tr., # <u>5</u> Exhibit 4/28/10 AM Tr., # <u>6</u> Exhibit 4/29/10 PM Tr., # <u>7</u> Exhibit 4/30/10 Tr., # <u>8</u> Exhibit Nawrocki Dep. Tr.)(Adamo, Kenneth) (Entered: 06/07/2010)
06/07/2010	<u>411</u>	Opposed SEALED MOTION <i>To Strike Certain Evidence Submitted in Support of Soverain's Post-Trial Motions</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 06/07/2010)
06/07/2010	<u>412</u>	SEALED RESPONSE to Motion re <u>403</u> SEALED MOTION For an Injunction or, in the Alternative, Ongoing Royalties filed by Newegg Inc. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4)(Yarbrough, Herbert) (Entered: 06/07/2010)
06/07/2010	<u>413</u>	SEALED RESPONSE to Motion re <u>402</u> Opposed SEALED MOTION for Judgment as a Matter of Law of Infringement of the 314, 492, and 639 Patents and for a New Trial on 639 Patent Damages filed by Newegg Inc. (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E) (Yarbrough, Herbert) (Entered: 06/07/2010)
06/07/2010	<u>414</u>	SEALED RESPONSE to Motion re <u>404</u> SEALED MOTION For Prejudgment Interest and Costs, Post-Verdict Damages to Judgment, and Post-Judgment Interest filed by Newegg Inc. (Yarbrough, Herbert) (Entered: 06/07/2010)
06/14/2010	<u>415</u>	Soverain's SEALED RESPONSE to Newegg's Opposed SEALED MOTION (Dkt. 411) <i>To Strike Certain Evidence Submitted in Support of Soverain's Post-Trial Motions</i> filed by Soverain Software LLC. (Adamo, Kenneth) (Additional attachment(s) added on 6/15/2010: # <u>1</u> Text of Proposed Order) (kls,). (Entered: 06/14/2010)
06/14/2010	<u>416</u>	Soverain's SEALED REPLY to Newegg's Response <u>413</u> to Soverain's Opposed SEALED MOTION <u>402</u> <i>for Judgment as a Matter of Law of Infringement of the 314, 492, and 639 Patents and for a New Trial on 639 Patent Damages</i> filed by Soverain Software LLC. (Attachments: (1) Exhibit 13 - Grimes testimony; (2) Exhibit 14 - Shamos testimony; (3) Exhibit 15 - 4-30-10 trial transcript)(Adamo,

		Kenneth) (Entered: 06/14/2010)
06/14/2010	<u>417</u>	REPLY to Response to Motion re <u>404</u> SEALED MOTION <i>For Prejudgment Interest and Costs, Post-Verdict Damages to Judgment, and Post-Judgment Interest filed by Sovereign Software LLC.</i> (Adamo, Kenneth) (Entered: 06/14/2010)
06/14/2010	<u>418</u>	SEALED REPLY to Response to Motion re <u>403</u> SEALED MOTION <i>For an Injunction or, in the Alternative, Ongoing Royalties</i> filed by Sovereign Software LLC. (Attachments: # <u>1</u> Declaration of Dr. Jack Grimes, # <u>2</u> Declaration of Dr. Michael Shamos)(Adamo, Kenneth) (Entered: 06/14/2010)
06/14/2010	<u>419</u>	SEALED REPLY In Support of Motion re <u>407</u> SEALED MOTION Renewed Motions for Judgment as a Matter of Law of Non-Infringement and Invalidity of the Asserted Claims and Alternative Motions for New Trial filed by Newegg Inc.(Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Yarbrough, Herbert) (Entered: 06/14/2010)
06/14/2010	<u>420</u>	SEALED REPLY In Support of Motion re <u>406</u> SEALED MOTION Renewed Motion for Judgment as a Matter of Law on Damages and Alternative Motion for New Trial or Remittitur filed by Newegg Inc. (Yarbrough, Herbert) (Entered: 06/14/2010)
06/21/2010	<u>421</u>	SEALED SUR-REPLY in Opposition to Renewed Motion re <u>402</u> Opposed SEALED MOTION <i>for Judgment as a Matter of Law of Infringement of the 314, 492, and 639 Patents and for a New Trial on 639 Patent Damages</i> filed by Newegg Inc. (Yarbrough, Herbert) (Entered: 06/21/2010)
06/21/2010	<u>422</u>	Plaintiff Sovereign's SEALED SURREPLY in Opposition to Defendant Newegg's Sealed Motion <u>407</u> <i>Renewed Motions for Judgment as a Matter of Law of Non-Infringement and Invalidity of the Asserted Claims and Alternative Motions for New Trial</i> filed by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit 24 - Grimes testimony, # <u>2</u> Exhibit 25 - Tittel testimony, # <u>3</u> Exhibit 26 - 4-29-10 PM trial transcript)(Adamo, Kenneth) (Entered: 06/21/2010)
06/21/2010	<u>423</u>	SUR-REPLY to Reply to Response to Motion re <u>406</u> SEALED MOTION <i>Renewed Motion for Judgment as a Matter of Law on Damages and Alternative Motion for New Trial or Remittitur</i> filed by Sovereign Software LLC. (Adamo, Kenneth) (Additional attachment(s) added on 6/21/2010: # <u>1</u> Signature Page of Reply) (gsg,). (Entered: 06/21/2010)
06/21/2010	<u>424</u>	SEALED SUR-REPLY to Motion re <u>403</u> SEALED MOTION <i>For an Injunction or, in the Alternative, Ongoing Royalties</i> filed by Newegg Inc. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Yarbrough, Herbert) (Entered: 06/21/2010)
06/29/2010	<u>429</u>	6.29.10 Minute Entry (Post-Verdict Motion Hrg): for proceedings held before Judge Leonard Davis: Post Verdict Motion Hearing held on 6/29/2010. (Court Reporter Shea Sloan.) (rlf,) (Entered: 07/02/2010)
06/30/2010	<u>425</u>	***STRIKEN PER <u>428</u> ORDER*** Sealed Document - Dft Supplemental Submission of Evidence by Newegg. (Attachments: # <u>1</u> Exhibit A)(Baldauf, Kent) Modified on 7/1/2010 (sm,). Modified on 7/2/2010 (mll,). (Entered: 06/30/2010)
07/01/2010	<u>426</u>	Emergency MOTION to Strike <u>425</u> Sealed Document by Sovereign Software LLC. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order)(Adamo, Kenneth) (Entered: 07/01/2010)
07/02/2010	<u>427</u>	RESPONSE in Opposition re <u>426</u> Emergency MOTION to Strike <u>425</u> Sealed Document <i>filed by Newegg Inc..</i> (Baldauf, Kent) (Entered: 07/02/2010)
07/02/2010	<u>428</u>	ORDER granting <u>426</u> Emergency Motion to Strike <u>425</u> Sealed Document. Signed by Judge Leonard Davis on 07/02/10. cc:attys 7-02-10 (mll,) (Entered: 07/02/2010)
07/28/2010	<u>430</u>	***DOCUMENT FILED IN ERROR. PLEASE DISREGARD.*** NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Post-Verdict Hearing Proceedings held on 7/22/10 before Judge Leonard Davis. Court Reporter Shea

		<p>Sloan, shea_sloan@txed.uscourts.gov. 62 pages.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 8/23/2010. Redacted Transcript Deadline set for 9/2/2010. Release of Transcript Restriction set for 10/29/2010. (sms,) (Transcript sealed by the Court.) Modified on 7/28/2010 (mjc,). (Additional attachment(s) added on 7/28/2010: #_1 Notice) (mjc,). (Entered: 07/28/2010)</p>
07/29/2010	<u>431</u>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Post-Verdict Motion Hearing held on 6/29/10 before Judge Leonard Davis. Court Reporter: Shea Sloan, shea_sloan@txed.uscourts.gov. 82 pages.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 8/23/2010. Redacted Transcript Deadline set for 9/2/2010. Release of Transcript Restriction set for 11/1/2010. (sms,) (Entered: 07/29/2010)</p>
08/03/2010	<u>432</u>	Exhibit List: Sovereign Software LLC's FINAL EXHIBIT LIST OF EXHIBITS ADMITTED DURING TRIAL (4.26.10 – 4.30.10) (rlf,) (Entered: 08/03/2010)
08/03/2010	<u>433</u>	Exhibit List: Newegg Inc'S FINAL EXHIBIT LIST OF EXHIBITS ADMITTED DURING TRIAL (4.26.10 – 4.30.10) (rlf,) (Entered: 08/03/2010)
08/03/2010		TRIAL EXHIBITS PLACED AND STORED IN CLERK'S OFFICE. (rlf,) (Entered: 08/03/2010)
08/11/2010	<u>434</u>	MEMORANDUM OPINION AND ORDER granting in part <u>402</u> Sealed Motion for Judgment as a Matter of Law; granting in part <u>403</u> Sealed Motion for Permanent Injunction or in the alternative Ongoing Royalties; granting in part <u>404</u> Sealed Motion for prejudgment interest, post-verdict damages, and post-judgment interest. All other motions are DENIED. Signed by Judge Leonard Davis on 08/11/10. cc:attys 8-11-10 (mll,) (Entered: 08/11/2010)
08/11/2010	<u>435</u>	FINAL JUDGMENT. Deft Newegg Inc is found to have unlawfully infringed US Patent Nos 5,715,314; 5,909,492; and 7,272,639. The patents-in-suit are not invalid and are enforceable. The Court awards damages to Sovereign Software LLC for Newegg's infringement of the '314 and '492 patents in the amount of \$2,500,000. Sovereign is further awarded a new trial on damages for Newegg's infringement of the '639 patent, to be held after all appeals have been exhausted. Sovereign is further awarded post-verdict damages of \$2,900 per day from 5-01-2010 until the date of this Final Judgment. Sovereign is further awarded prejudgment interest on the actual damages found by the jury calculated at the prime rate as of the date of this Final Judgment compounded monthly through 7-31-2010 and compounded daily for the month of August, 2010. Sovereign is awarded its prejudgment Costs of Court. Sovereign is entitled to post-judgment interest for any time period between the entry of this Final Judgment and the date upon which Sovereign receives payment from Newegg as ordered herein. For reasons stated in the Court's contemporaneous Memorandum Opinion and Order, Newegg is ordered for the remaining life of the '314 and '492 patents to pay Sovereign an ongoing royalty of \$0.15 per infringing transaction. All relief not granted in this Final Judgment is DENIED. All pending motions not previously

		resolved are DENIED. Signed by Judge Leonard Davis on 08/11/10. cc:attys 8-11-10(mll,) (Entered: 08/11/2010)
08/25/2010	<u>437</u>	MOTION for Bill of Costs (<i>AGREED</i>) by Sovereign Software LLC. (Attachments: # <u>1</u> Appendix, # <u>2</u> Affidavit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit)(Smith, Debra) (Entered: 08/25/2010)
08/25/2010		***FILED IN ERROR. Document # 437, Bill of Costs. PLEASE IGNORE. To be refiled by Attorney*** (gsg) (Entered: 08/25/2010)
08/25/2010	<u>438</u>	MOTION for Bill of Costs (<i>AGREED</i>) by Sovereign Software LLC. (Attachments: # <u>1</u> Appendix, # <u>2</u> Affidavit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit)(Smith, Debra) (Entered: 08/25/2010)
08/30/2010	<u>439</u>	BILL OF COSTS by Sovereign Software LLC. Costs Taxed in the amount of \$66,246.87. (Attachments: # <u>1</u> Affidavit)(mll,) (Entered: 08/30/2010)
09/01/2010	<u>440</u>	Unopposed MOTION for Bond <i>Newegg Inc.'s Unopposed Motion to Approve Supersedeas Bond for Purpose of Obtaining A Stay Pending Appeal</i> by Newegg Inc.. (Attachments: # <u>1</u> Supersedeas Bond, # <u>2</u> Power of Attorney of James E. Bass, # <u>3</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 09/01/2010)
09/02/2010	<u>441</u>	ORDER granting <u>440</u> Motion for Approval of Supersedeas Bond. Signed by Judge Leonard Davis on 09/02/10. cc:attys 9-02-10 (mll,) (Entered: 09/02/2010)
09/07/2010	<u>442</u>	SEALED MOTION <i>Newegg's Renewed Post-Judgment Motions for Judgment as a Matter of Law of Non-Infringement and Invalidity of the Asserted Claims and Alternative Motions for New Trial</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 09/07/2010)
09/07/2010	<u>443</u>	SEALED MOTION <i>Newegg's Renewed Post-Judgment Motion for Judgment as a Matter of Law on Damages and Alternative Motion for New Trial or Remittitur</i> by Newegg Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Yarbrough, Herbert) (Entered: 09/07/2010)
09/09/2010	<u>444</u>	RESPONSE in Opposition re <u>443</u> SEALED MOTION <i>Newegg's Renewed Post-Judgment Motion for Judgment as a Matter of Law on Damages and Alternative Motion for New Trial or Remittitur</i> , <u>442</u> SEALED MOTION <i>Newegg's Renewed Post-Judgment Motions for Judgment as a Matter of Law of Non-Infringement and Invalidity of the Asserted Claims and Alternative Motions for New Trial</i> filed by Sovereign Software LLC. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Text of Proposed Order)(Giannetti, Thomas) (Entered: 09/09/2010)
09/10/2010	<u>445</u>	NOTICE OF APPEAL - PATENT CASE as to <u>435</u> Judgment,,,,, by Newegg Inc.. Filing fee \$ 455, receipt number 0540-2663849. (Baldauf, Kent) (Entered: 09/10/2010)
09/22/2010	<u>446</u>	TRANSCRIPT REQUEST by Newegg Inc. (mll,) (Entered: 09/22/2010)
09/28/2010	<u>447</u>	TRANSCRIPT REQUEST by Newegg Inc. (mll,) (Entered: 09/29/2010)
10/01/2010		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals for the Federal Circuit re <u>445</u> Notice of Appeal - PATENT CASE (mll,) Modified on 10/1/2010.(mll,). (Entered: 10/01/2010)
10/01/2010	<u>448</u>	ORDER denying <u>442</u> Sealed Motion; denying <u>443</u> Sealed Motion. Signed by Judge Leonard Davis on 10/01/10. cc:attys 10-01-10 (mll,) (Entered: 10/01/2010)
10/05/2010	<u>449</u>	AMENDED NOTICE OF APPEAL as to <u>435</u> Judgment,,,,, <u>448</u> Order on Sealed Motion, by Newegg Inc.. (Yarbrough, Herbert) Modified on 10/6/2010 (mjc,). (Edited text to add Amended.) (Entered: 10/05/2010)
10/15/2010	<u>450</u>	Appeal Remark re <u>445</u> Notice of Appeal - PATENT CASE, <u>449</u> Notice of Appeal : Received by USCA Federal Circuit on 10-08-10. (mll,) (Entered: 10/20/2010)
10/15/2010	<u>451</u>	NOTICE of Docketing Record on Appeal from USCA Federal Circuit re <u>445</u> Notice of Appeal - PATENT CASE filed by Newegg Inc., <u>449</u> Notice of Appeal

		filed by Newegg Inc.. USCA Case Number 2011-1009 (mll,) (Entered: 10/20/2010)
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1 and, of course, Trey Yarbrough in Tyler.

2 THE COURT: Mr. Yarbrough.

3 MR. SAYLES: From the Webb Law Firm, this is Dan
4 Brean, Dave Hanson, and this is Ken Baldauf. And with the
5 Court's permission we have in the courtroom Claudia Frost of
6 the Pillsbury Firm who will assist us on legal matters during
7 the trial. And our client representatives and in-house
8 counsel Mr. Lee Cheng and Mira Wolff.

9 THE COURT: Very good.

10 I must tell you I found out not too long ago who
11 Newegg was through a -- full disclosure -- a purchase I made
12 through Newegg, and it a very neat concept that you have
13 there. All right. Well, let's get down to this case -- and
14 if anyone wishes for me to recuse on that basis, I will be
15 glad to, and let this pass to someone else.

16 MR. ADAMO: It depends on what you bought. No, Your
17 Honor, obviously not.

18 THE COURT: Thank you. All right. Well, we have
19 got a lot to do here today. Let's get down to business. I
20 think what I will do is start with the Daubert motions and
21 other expert-related motions. So first let's hear Newegg's
22 motion with regard to -- Nawrocki?

23 MR. SATINE: Nawrocki (different pronunciation.)

24 THE COURT: Nawrocki.

25 Okay. Mr. Brean.

1 MR. BREAN: Good morning, Your Honor. Newegg's
2 position with respect to its Daubert challenge to Mr. Nawrocki
3 is centered around his invocation of the entire market value
4 rule. Essentially the rule exists as it is explained in the
5 Rite-Hite case and in Lucent v. Gateway. The purpose of this
6 rule is to avoid overreaching by a patentee where they are
7 trying to encompass damages that extend beyond what is
8 traceable to the patented invention.

9 In this instance Mr. Nawrocki has taken the total
10 profit of newegg.com's online sales, the total value of each
11 sale and essentially applied the 25 percent rule, or as he
12 uses it, the 25 to 33 percent rule, to that entire profit.
13 Now, Newegg's profit is traceable to a multitude of sources
14 including the pricing variable to offer the quality of the
15 products, Newegg's award winning customer service, among many
16 other features of its website, its search functionality, and
17 the allegedly infringing shopping cart and session ID
18 functionality.

19 With respect to Mr. Nawrocki's methodology,
20 essentially, it is set forth in his report in Paragraph 100
21 where he takes Newegg's profit margins and applies those
22 margins to the average value of each sale to arrive at the
23 average profit, and then he explains that applying a 25 to 33
24 percent apportionment to these figures results in a royalty
25 range that equates to .75 dollars to \$2.20 per order and his

1 \$1.20 falls precisely in the middle of that range.

2 Now, the cases that we cited in our report, such as
3 the Cornell case, the Grain Processing case, it is clear that
4 some sound economic proof is required in order to invoke this
5 rule and take a percentage of profits that are attributable to
6 things other than the patented invention; and as set forth in
7 the Rite-Hite case, two of the things that have to be shown
8 would be (1) that the patented invention shares a functional
9 relationship with the -- what is included in the royalty base;
10 and (2) that the patented invention drives the demand for
11 everything that is included in the royalty base. And, again,
12 as set forth in his report on Paragraph 100, the entire value
13 of each sale, the entire profit has been included in his
14 calculation.

15 Now, with respect to Mr. Nawrocki's methodology --

16 THE COURT: Are you talking about the total value of
17 each sale or the profit from each sale?

18 MR. BREAN: The total profit from each sale is what
19 he uses --

20 THE COURT: The total profit. So not gross revenue
21 but net profit basically -- or gross profit, I guess?

22 MR. BREAN: Yes, Your Honor.

23 THE COURT: What does the plaintiff have to say in
24 response to that?

25 MR. SATINE: Good morning, Your Honor. This

1 argument is really a strawman.

2 THE COURT: Really a what?

3 MR. SATINE: A strawman. There is no use of the
4 entire market value rule by Mr. Nawrocki. He has made that
5 clear at his deposition and in his report. What has happened
6 here is in determining a royalty, there is the royalty base
7 and the royalty rate. The entire market value rule applies to
8 the royalty base. Mr. Nawrocki's royalty base is the number
9 of transactions which infringe the patents.

10 Mr. Nawrocki uses that as his royalty base. He then
11 determines a royalty rate and in calculating a royalty rate,
12 multiplied against the royalty base. One of the things that
13 he looks at is the average revenue per infringing transaction
14 and he calculates what is a rate with respect to that average
15 sales revenue from the infringing transaction.

16 It is not -- yes, when you multiply all of the
17 numbers it is going to be there somewhere in the equation what
18 their revenue is because their revenues are using -- engaging
19 in a transaction. The transaction is the infringement. So in
20 calculating a rate, one of the things an expert has to look at
21 is how much is the transaction worth to the infringer? But
22 then when Mr. Nawrocki looks at the base, the only thing he is
23 looking at --

24 THE COURT: Is the number of transactions?

25 MR. SATINE: Is the number of transactions which --

1 of the infringement. That is not a violation of the entire
2 market value.

3 THE COURT: What is your response to that?

4 MR. BREAN: Newegg's response is that this is a red
5 herring; that Mr. Nawrocki doesn't say he invokes the entire
6 market value rule. He says that he is basing his royalty on
7 the number of transactions; but, in fact, a reading of his
8 report reveals the only substantive calculation that Mr.
9 Nawrocki makes in his report that touches on where that \$1.20
10 per transaction comes from is by taking Newegg's total profit
11 and applying the 25 percent rule.

12 This sort of, as we explain in our reply brief -- or
13 our surreply brief, Mr. Nawrocki's methodology, the
14 mathematics, has been manipulated in a way to appear as if he
15 is using the number of transactions; but, in fact, the
16 mathematics works out the same whether he had explicitly used
17 the entire market value rule or not. Essentially, what he has
18 done is taken the average sale and taken 25 percent of the
19 profit from that sale and then multiplied by the number of
20 transactions. Whereas, under a more direct approach under the
21 entire market value rule, he would simply take the royalty per
22 transaction and then multiply for each transaction -- I'm
23 sorry. I think I got that backwards.

24 Under the entire market value rule, he would find
25 out the royalty base of the total revenues; and then instead

1 of taking it as an average, he would then already include the
2 number of transactions.

3 THE COURT: All right. The Court is going to deny
4 the Daubert motion, Docket No. 252.

5 All right. Soverain's Daubert motion regarding
6 Tittel, Docket No. 253. Who is going to be heard from
7 Soverain on that?

8 MR. ADAMO: Dr. Shentov. We have it split up,
9 hopefully, for efficiency.

10 THE COURT: Okay.

11 MR. SHENTOV: Your Honor, for your permission can I
12 stand here, because I have a PowerPoint presentation?

13 THE COURT: As long as the Court Reporter can hear
14 you.

15 Can he plug in up there with his computer? Well,
16 however you want. However would be the fastest, you can go
17 ahead.

18 MR. SHENTOV: Let me see if it works out.

19 Your Honor, the defendant to this case is one
20 technical expert for issues of infringement and validity, and
21 it is a very charming gentleman who has written books and is
22 quite knowledgeable. However, it turns out that when the time
23 came for him to present expert reports and to help the jury,
24 allegedly at some point with scientific or technical or other
25 specialized knowledge, he really didn't do it.

1 the value of a license.

2 The defendant in this case points to a product, the
3 Transact product that Sovereign offers, as a non-infringing
4 alternative, which would have been on the table at this
5 hypothetical negotiation. Their position is that it is an
6 acceptable non-infringing alternative that can be part of
7 their expert's damage analysis in connection with the
8 determination of reasonable royalty.

9 In fact, they go so far as to say the price of a
10 Transact license should be pointed to -- would have been
11 pointed to by the hypothetical negotiator as a cap on what
12 they would have paid for a license under the patents-in-suit.

13 Well, there are a couple of problems with that, Your
14 Honor. The first is that Transact is really not -- the
15 Transact license is not a patent license. It is a software
16 license. And that is not just a semantic difference. As I am
17 sure you appreciate, a patent license allows you to design a
18 custom product, whatever you want, that is within the scope of
19 the patent. Whereas, a software license allows you to use the
20 software. It doesn't allow you to change the software. It
21 doesn't allow you to make modifications to the software.

22 So this is an apples-to-oranges comparison. It is
23 plainly not something that is contemplated by the hypothetical
24 negotiation. They are negotiating for a patent license and
25 not for a software license, so we think it is irrelevant.

1 other products that are out there, and they are all offered
2 for various price points, and that is the reason for this. We
3 are by no means going to suggest that they are non-infringing
4 alternatives.

5 MR. GIANNETTI: I don't see the relevance of these
6 data points. I don't see why the jury -- these should be
7 presented to the jury. There is a risk of confusion here. I
8 believe that this should be excluded.

9 THE COURT: I'm not real sure what they are, but I'm
10 going to grant the motion in limine at this time, but that is
11 not without prejudice to approaching the Bench first when we
12 get further into the testimony and explaining it to me a
13 little bit better, and maybe I will feel otherwise at that
14 time.

15 All right. Is that all of Soverain's motions in
16 limine?

17 MR. GIANNETTI: Yes, Your Honor.

18 THE COURT: All right. Newegg's motion in limine
19 No. 306, No. 2; preclusion of evidence relating to licenses of
20 the patents-in-suit where such licenses were entered into in
21 settlement of litigation.

22 MR. BALDAUF: Yes, Your Honor. This motion deals
23 specifically with the issue of the settlement agreements with
24 Amazon and the Gap and with the other defendants in this
25 case.

1 The plaintiff has agreed that they have no intention
2 of offering the amount at which these licenses were entered
3 into, but they still want to be able to get up there and say
4 that all these people are licensees of theirs.

5 For the life of me I cannot understand nor even
6 suggest how this is relevant. It is not relevant to damages.
7 I have the recent decision by Magistrate Judge Everingham in
8 Data Treasury where he has specifically held that these types
9 of lump sum agreements are completely irrelevant when the
10 plaintiff is seeking a royalty under a running royalty theory.

11 These were all lump sum payments, have no bearing on
12 their damage case whatsoever, and they haven't been relied
13 upon by their expert.

14 Now, to the extent that the other reason they want
15 to be able to say this is that perhaps it lends some credence
16 to the validity of their patents by saying, well, Amazon is a
17 licensee, that is incredibly prejudicial. Those settlement
18 agreements were all entered into under actual litigation.

19 Now, I submit probably the likely reason that Amazon
20 settled was that the MercExchange/eBay case had not been
21 decided yet and the threat of an injunction was still out
22 there. Beyond that, their experts have not submitted any
23 opinion that they are going to be relying upon that as
24 secondary indicia of non-obviousness. There is just
25 absolutely no basis that they should be able to back-door

1 these settlement agreements in such a way that would
2 incredibly prejudice the jury.

3 Besides the fact that we have these very high
4 settlement amounts out there, specifically Amazon's, if they
5 want to get out there and wave around the fact that Amazon is
6 a licensee, it prejudices the jury because they will sit back
7 and think, well, here is a sophisticated big company we have
8 all heard of, they have taken a license, that must mean there
9 is something to these patents. While we all know that was
10 entered into to avoid litigation, there is no reasonable basis
11 for allowing that into evidence.

12 MR. GIANNETTI: Your Honor, if this is a relevancy
13 issue, I would point to the Inline case in the District of
14 Delaware where it was clearly said that evidence of agreements
15 in general or policy of making a particular type of agreement
16 may be relevant as long as it does not extend to the terms of
17 the licenses granted the settlement of litigation. This is
18 relevant to the issue of the strength of the patents and
19 commercial success, and our expert I believe did refer to this
20 in his report.

21 THE COURT: You are not going into the amount --

22 MR. GIANNETTI: No. Neither side has listed the
23 license agreements, per se. We are not going to tell the jury
24 the amounts. We are not going to tell the jury the terms,
25 simply that these licenses have been entered into. We want to

1 be able to identify the parties, and we want to be able to say
2 that the licenses have been entered into following litigation.

3 THE COURT: You want to say they have been entered
4 into following litigation?

5 MR. GIANNETTI: That would be the plan, Your Honor,
6 yes.

7 THE COURT: And they are offering a number of
8 license agreements which they are going to say these are
9 companies people you have never heard of. There are a slew of
10 licensing agreements that the prior owner of the patent
11 licensed. They are going to be offering those, and we have
12 got to be able to respond to that, so they have really opened
13 the door to that kind of testimony.

14 I think what we are asking for here, I don't think
15 it really falls under the Data Treasury rule that Counsel was
16 talking about or the ResQNet case and its progeny. That is
17 really not what we are talking about here. We just want to
18 tell the jury that these patents have been licensed, to whom
19 they have been licensed, and what the circumstances were. And
20 that's it. We are not trying to confuse the jury.

21 THE COURT: What is the relevance of that?

22 MR. GIANNETTI: Well, the relevance of the licenses
23 and the fact that there have been licenses and the
24 individuals, first of all, it is relevant because we need to
25 answer their charge that we have licensed these patents but to

1 a bunch of no-name companies.

2 Secondly, it is relevant to the issue of commercial
3 success of the patents. I mean the fact that some major
4 companies have taken licenses I think it is something that the
5 jury should hear about the strength of our patents.

6 MR. BALDAUF: Your Honor, if I may?

7 THE COURT: Yes, go ahead.

8 MR. BALDAUF: I didn't mean to interrupt. I would
9 like to address two points. First of all, this issue with the
10 Divine licenses. We went -- in our expert's deposition we had
11 listed a number of these licenses that their predecessor had
12 entered into, Divine. During the deposition they made a point
13 that some of these were entered into in settlement of
14 litigation. I personally went through all of the hundreds of
15 thousands of documents that they produced and determined which
16 ones were entered into under settlement of litigation, and we
17 took those off the list. We are not going to mention them.
18 We are not going to talk about them.

19 There is absolutely no reason these should come in.
20 I could be wrong. I've been wrong many times before. But I
21 don't believe there is any reference to any of these
22 agreements in any of their expert reports as a secondary
23 indicia of non-obviousness.

24 But beyond that, you just heard him say it, they
25 want to be able to get up here and say that Amazon took a

1 license, Amazon is a licensee of this.

2 Well, what is anybody going to think? Anyone is
3 going to think that, wow, that is an arm's length deal.
4 Amazon wanted that technology. Amazon saw something there.
5 They took a license. But that case was in this very
6 courtroom. Amazon certainly didn't do that willingly. Amazon
7 certainly didn't seek out this technology.

8 It is so incredibly prejudicial and will
9 unquestionably leave the jury with the thought in their mind
10 that there was some sort of willing component to this. It is
11 probative of nothing. Amazon tried to avoid spending money in
12 the threat of an injunction. I think we all know that.

13 MR. GIANNETTI: How am I going to answer when he
14 puts in all these Divine licenses and says, look at all these
15 licenses? These are to companies that you have never heard of
16 before. We have to be able to tell this story to the jury,
17 Your Honor. It is not fair to have him do that and not allow
18 us to put in -- we are not putting in the terms --

19 THE COURT: What is he going to be putting in?

20 MR. GIANNETTI: We are just putting in the names of
21 the licensees, the fact that they took licenses. And we also
22 would like to be able to mention that these resulted from
23 litigation, but certainly --

24 THE COURT: No. I am saying what are you seeking to
25 rebut that he is putting in?

1 MR. GIANNETTI: He is putting in all of these Divine
2 licenses. I don't know how many they are putting in --

3 THE COURT: What kind of licenses?

4 MR. GIANNETTI: Divine was a company.

5 THE COURT: Okay.

6 MR. GIANNETTI: After Open Market there was Divine,
7 and Divine licensed the patents widely, and there were a
8 number of companies that they gave licenses to. Divine is the
9 name of the company, the licensor.

10 And these licenses are going to come into evidence
11 and many of them are to small companies, very small companies
12 that probably nobody has ever heard of. They weren't for a
13 lot of money. These licenses were for -- you know, the
14 company was in dire straits. So they put out these licenses.
15 That is all going to come in. But we think we should be able
16 to tell the other side of the story, which is that there were
17 some substantial companies that took in licenses. We are not
18 going to put in the amounts, we are not going to put in the
19 terms of the license, but we need to tell that to the jury.

20 THE COURT: I'm going to deny the motion in limine.

21 All right. What else? Is there anything further
22 from Newegg?

23 MR. BALDAUF: That's it, Your Honor -- excuse me,
24 I'm sorry. There is one other issue that Ms. Frost would like
25 to --

1 MR. SAYLES: First of all, may I address something
2 else?

3 THE COURT: Yes.

4 MR. SAYLES: In the event that they offer these
5 settlement licenses and we object and it is overruled,
6 consistent with your denial of the motion in limine, would we
7 then have the ability, if we want to, to put in the fact that
8 these are lump sum agreements because we have the competition
9 in this case of them seeking a running royalty and us putting
10 forth a lump sum?

11 It seems to me that they shouldn't have the cake and
12 eat it too to put in settlement licenses and say they are not
13 going into amounts but leave us with the inability to point
14 out that these were lump sum settlements? So I inquire
15 because I want to --

16 THE COURT: If you put in they were lump sum
17 settlements, would you let them put in the amounts that were
18 paid? Would you object to that?

19 MR. SAYLES: Well, we don't think the amounts should
20 come in. If that was the option we were faced with, we would
21 have to decide whether it was worth it or not. But the Amazon
22 settlement was \$40 million, and that sounds like a lot of
23 money over there in the jury box. So my inclination is, right
24 now, that we wouldn't want that amount in but these settlement
25 licenses were indeed lump sums.

1 MR. GIANNETTI: We are not putting the amounts in,
2 Your Honor. I don't think there is any need to tell them what
3 the terms were.

4 THE COURT: What is your response to his request to
5 put in that they were lump sum settlements instead of running
6 royalties?

7 MR. GIANNETTI: Well, not if we are not going to
8 tell them what the amounts are. If the terms aren't coming
9 in, they shouldn't come in for either party. We are not going
10 to tell the jury that Amazon paid \$40 million.

11 THE COURT: I think that they are entitled to put in
12 the fact that this technology was licensed to Amazon and
13 others, to rebut what you are putting in regarding the Divine
14 licenses. But how much further you go -- this becomes a very
15 slippery slope -- if you then want to put in that they were
16 lump sum instead of paid-up royalty, then I'm going to let
17 them put in the amounts of the settlement.

18 You know, y'all need to think that through, and I
19 wish y'all could discuss it and decide before we get in the
20 middle of trial to do that --

21 MR. GIANNETTI: I can say that we don't intend to
22 put in the amounts right now, Your Honor.

23 THE COURT: I know you don't, but if they want to
24 put in that they were lump sum, then I would allow you to put
25 in the amounts is what I am saying.

1 MR. GIANNETTI: In other words, if they want to put
2 in the lump sum, then we get to put in the amounts?

3 THE COURT: That's right.

4 MR. GIANNETTI: We would prefer no terms at all.

5 THE COURT: I think that would be simpler because
6 you get on this slippery slope of retrying -- it just starts
7 going into a whole other case, so I am inclined at this time
8 with stopping it, with letting them just put in it was
9 licensed. You think about it, if you want to really urge, I
10 will consider that later -- I'm not going to rule on it right
11 now, but I will look at it. But I will give you a heads-up
12 that if you pursue that course and I did go that far, then I
13 would let them put the amounts in.

14 MR. SAYLES: I understand.

15 MR. GIANNETTI: Thank you, Your Honor.

16 MR. SAYLES: Can I mention something to Mr. Baldauf
17 that I want him clarify?

18 THE COURT: Okay.

19 (Pause in proceedings.)

20 MR. BALDAUF: Your Honor --

21 THE COURT: Let me say this further about that last
22 issue we were talking about: I think really what is at issue
23 or what has been put in issue is the fact of licensing. Once
24 we get beyond that and start getting into the terms of the
25 license, neither one of you have relied upon those for your

1 damage experts, so I would really rather probably not get into
2 all that area. Okay.

3 MR. SAYLES: I think I would probably not, but if I
4 can take the Court up on thinking about it.

5 THE COURT: Think about it. But -- how long do you
6 need to think about it?

7 MR. SAYLES: Well, I can let you know before we
8 start on Monday morning.

9 THE COURT: Why don't you let Mr. Giannetti know of
10 your position by, say, Thursday at noon.

11 MR. SAYLES: I can do that.

12 MR. GIANNETTI: It is a problem, Your Honor, because
13 this was not something factored into the expert reports.

14 THE COURT: I think it would be a problem for both
15 sides the further we go down that road. So I would rather
16 just stay in the shallow water.

17 Go ahead.

18 MR. BALDAUF: Mr. Sayles reminded me of two other
19 things. When we were discussing the issue of the expert
20 report, we spoke just about the '639 patent, and you had also
21 mentioned Claim 61 of the '492 patent, which is a dependent
22 claim. We have no intention of having our expert address that
23 claim in the context of infringement. We will just focus upon
24 the underlying independent claim that was addressed.

25 With respect to invalidity, this claim offers

1 in the time period before the license.

2 And here that's not an issue, because the
3 entire damage period here is after, well after --

4 THE COURT: All right. How -- how
5 important is it for you to mention this in your opening
6 statements?

7 MR. BALDAUF: It's extremely important to
8 us, Your Honor, because this is another software product
9 that was out there that was licensed with this
10 technology, and we believe it's a non-infringing
11 alternative that was available to Newegg.

12 THE COURT: All right. I'm going to
13 grant the motion in limine at this time. Don't mention
14 it in opening statement, and I'll give you a ruling on
15 the admissibility when it comes up during the course of
16 the trial.

17 MR. BALDAUF: Real briefly, Your Honor,
18 with respect to one of the slides that has been proposed
19 by the Plaintiff, it appears that they're going to
20 reference the Amazon license, as well as the other
21 settlement licenses with the Defendants in this case, as
22 evidence of commercial success.

23 I'd like to bring your attention to the
24 decision in DataTreasury versus Wells Fargo from Judge
25 Folsom from a few months ago, directly on point of how

1 that these types of settlement agreements are not
2 evidence of commercial success.

3 Number one, there has to be expert
4 testimony from the Plaintiffs. There has to be some
5 established nexus between those settlement agreements
6 and the recognized commercial success or value of the
7 patents as opposed to just the design to avoid for
8 litigation, and that has not been done. In fact, it's
9 nowhere in the any of their expert reports.

10 MR. ADAMO: Very brief response, Your
11 Honor.

12 Mr. Sayles is going to use this slide in
13 his opening, which he's removed the names of the various
14 licensees, which was on the version that I was given
15 last night; but he has informed me in good candor that
16 the names are going to be mentioned during trial.

17 About five minutes. These are agreed
18 exhibits. This stuff is all going to be in evidence.
19 There's no requirement under law that evidence of
20 secondary considerations, including commercial success,
21 has got to be in an expert report. It is, by the way,
22 in Professor Shamos' expert report. So it is there and
23 certainly in his slides, which come directly from his
24 report.

25 Two things that Mr. Giannetti mentioned

1 when you ruled in our favor last Monday to allow us to
2 name the licensees -- and I didn't put the -- the
3 numbers are not down here. I even changed the heading
4 to take off any reference to commercial success -- and
5 we told them this last night -- to make this more
6 neutral.

7 This is exactly what Mr. Giannetti argued
8 to Your Honor a week ago today that you allowed us to
9 do. The Plaintiffs -- well, his position is, no small
10 licensees, and that's not going to be the situation for
11 more than about probably 10 minutes.

12 And I think the position is, you've got
13 to have experts discuss commercial success, which is not
14 the law, but in any event, Dr. Shamos has it, and we
15 should be allowed to use this, Your Honor.

16 THE COURT: Response?

17 MR. BALDAUF: Your Honor, we -- with
18 respect to the point of mentioning that there are larger
19 licenses, that's not what we're talking about here.

20 We're talking about the issue of
21 commercial success in that reference. And there's been
22 no established link between these settlement licenses
23 and commercial success.

24 THE COURT: Now, are y'all going to
25 mention the licenses?

1 MR. BALDAUF: We have no interest in
2 mentioning the Amazon license whatsoever, as we put in
3 our motion in limine to begin with.

4 MR. ADAMO: Your Honor, they've moved
5 into evidence and we've agreed, we're about to read the
6 list into the record, all the small licenses, exactly
7 the issue Mr. Giannetti argued to Your Honor last week
8 when you allowed us to do what's in my -- in my slide.

9 MR. BALDAUF: Which were not in
10 settlement litigation.

11 MR. ADAMO: Your Honor, that -- this has
12 all been argued last week. Nothing has changed. This
13 is exactly what you allowed us to do.

14 THE COURT: All right. I'm going to --
15 I'm going to grant their objection. Don't go into that
16 in opening statement, and I'll take it up when we get
17 into the evidence.

18 Bring the jury in.

19 COURT SECURITY OFFICER: All rise for the
20 jury.

21 (Jury in.)

22 THE COURT: All right. Each member of
23 the jury, come back down to these four seats on the
24 front row down on this end, please.

25 Thank you. I think it will be easier for

1 opening statements, which will take about an hour.

2 So be in recess until 10:25.

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: You may follow the Court
5 Security Officer to the jury room.

6 (Jury out.)

7 COURT SECURITY OFFICER: All rise.

8 THE COURT: Please be seated.

9 All right. Let me revisit this license
10 issue. I need to know -- what I want to know from
11 Newegg is, are you going, in opening statement, to go
12 into your argument that Soverain has only listed --
13 licensed these patents to these small no-name companies?

14 MR. SAYLES: Yes, we are.

15 THE COURT: Okay. If you're going to go
16 down that road --

17 MR. SAYLES: I'm sorry, sir.

18 THE COURT: Excuse me. Go ahead.

19 MR. SAYLES: Not by name, but I would say
20 we're definitely going to make reference to that.

21 THE COURT: Okay. Well --

22 MR. SAYLES: The names are not --

23 THE COURT: You know, my mind -- I've had
24 two or three cases going here. I'm getting this one
25 squared back in.

1 And I believe Mr. Adamo was correct, that
2 in the prior pretrial, I said that if you went into
3 that, they would be able to go into the fact that they
4 had licensed to significant companies, but they would
5 not go into the amounts, and we would not get into all
6 that settlement stuff.

7 I think both sides agreed they did not
8 want to get into that mess; is that right?

9 MR. SAYLES: That's right.

10 THE COURT: Okay.

11 MR. ADAMO: That's correct, Your Honor.

12 THE COURT: Okay. So that's all you're
13 going to say?

14 MR. ADAMO: You saw the slide. All I'm
15 going to do --

16 THE COURT: No, I didn't see it.

17 MR. ADAMO: Oh, I'm sorry.

18 THE COURT: You held it up, but I
19 couldn't read it.

20 MR. ADAMO: My apologies, Your Honor.

21 THE COURT: Okay. All right.

22 MR. ADAMO: That's -- that's all the
23 slides. That's all I will --

24 THE COURT: Do you have any objection
25 with that?

1 MR. SAYLES: That slide would be
2 consistent with your ruling in the pretrial.

3 THE COURT: Okay. So what was your
4 objection this morning about then?

5 MR. BALDAUF: Your Honor, it was the
6 reference to these licenses with the entities that have
7 been previously sued as evidence of commercial success
8 as a secondary consideration.

9 Amazon, [REDACTED], all of these entities that
10 settled --

11 THE COURT: Isn't that what I just talked
12 about that we decided at the pretrial?

13 MR. BALDAUF: Well, it's how they're
14 referenced, Your Honor, the idea of whether they can be
15 referenced, the fact that they exist or whether he's
16 going to go into the fact --

17 THE COURT: Okay.

18 MR. BALDAUF: -- that these are evidence
19 of secondary consideration on obviousness.

20 THE COURT: All right. How are you going
21 to reference them, Mr. Adamo?

22 MR. ADAMO: Your Honor, all I was going
23 to do was -- and I apologize.

24 Casey, can you put 22 up? There's the
25 slide, Your Honor, if you can see it on the monitor.

1 THE COURT: Right. Okay.

2 MR. ADAMO: And I was simply going to put
3 that up, and this has in a series -- short series of
4 slides where I talk about contemporaneous recognition of
5 the inventions.

6 I was going to simply put the slide up
7 and say Soverain Software has also licensed the patented
8 technology, and this is a list of the licensees. That
9 was it.

10 THE COURT: Okay. All right. Is there
11 any objection to that, if that's as far as he goes?

12 MR. BALDAUF: We don't maintain the
13 objection in that -- in view of the fact that these are
14 in settlement of litigation, we don't believe they're
15 proper to put up.

16 THE COURT: Well, I'm not sure I want to
17 get into settlement litigations, but if y'all are going
18 to take the position that it's only been licensed to a
19 bunch of no-name companies, I think they're entitled at
20 least to show that it has been licensed to big-named
21 companies.

22 But I don't think y'all want to get into
23 the amount. I don't want to get into the amount. I
24 don't think the others do. But if -- if -- you know,
25 this is a tricky slope, once we start getting into them.

1 But you're teeing it up by arguing that
2 they have not licensed it.

3 MR. BALDAUF: Well, Your Honor, I think
4 there's a significant difference in that in the first
5 instance, the agreements that we're relying on have not
6 been entered into in settlement of litigation, and these
7 have been.

8 THE COURT: Okay. But I'm -- I'm not
9 going to let the jury just see half the picture. So
10 even though these were entered into in settlement of
11 litigation, they were significant licenses, so...

12 All right. You may go into that,
13 Mr. Adamo.

14 Bring the jury in, please.

15 MR. ADAMO: Can I restore the slide?

16 THE COURT: Yes, you may.

17 MR. ADAMO: Thank you, Your Honor.

18 (Jury in.)

19 THE COURT: All right. Please be seated.

20 All right, Ladies and Gentlemen of the
21 Jury. We're now going to hear the opening statements.
22 The Court will recognize Mr. Adamo, who I don't believe
23 you met last week. I think he was stranded in Europe
24 somewhere due to the volcano going off, but he's --

25 MR. ADAMO: I was being held captive by a

1 technical problems that had severely restricted online
2 shopping development when the internet first became
3 available for public use, which was in 1991, and the
4 worldwide web was developed in 1991 and 1992.

5 They created solutions that the industry
6 and even Newegg's technical expert recognized were
7 technically innovative. These solutions strongly
8 influence right to this day online shopping, what
9 sometimes is referred to as E-commerce.

10 Soverain Software is the successor in
11 ownership, the later owner of the patents-in-suit that
12 resulted from those inventions. We're here because we
13 seek payment, as provided by the law, for Newegg's use
14 of these inventions in a very successful business that
15 has turnover of over \$2 billion a year in online
16 shopping.

17 I want to spend just a little bit of time
18 talking about technology. Dr. Grimes, our first
19 witness, is going to get into this with y'all in a
20 little more detail.

21 The technology involved in this case, as
22 Mr. Roth told you last Monday, is the internet and a
23 part of the internet that's called the worldwide web.

24 Sixteen years ago, when this work was
25 first done, online shopping -- to the extent anything

1 at that time.

2 And licenses continue, now that Soverain
3 owns the patents, to companies such as amazon.com,
4 TigerDirect, Zappos.

5 All right. Who's Newegg, right? Why are
6 we chasing Newegg around? Are we picking on some poor
7 person here that's inappropriate? Hardly. Newegg is
8 the second largest online shopping company in the United
9 States. Only amazon.com is bigger.

10 THE COURT: Mr. Adamo, you have ten
11 minutes left.

12 MR. ADAMO: Ten, Your Honor?

13 THE COURT: Ten.

14 MR. ADAMO: Thank you, sir.

15 Newegg was founded in 2001, okay? They
16 own and run the website www.newegg.com. And since the
17 lawsuit started -- this lawsuit started in 2007 --
18 they've actually launched two new websites,
19 neweggmall.com and newegg.ca, which is a website based
20 in Canada.

21 Newegg has been in the process of making
22 a number of filings with the Securities and Exchange
23 Commission relating to something they're doing with
24 their business.

25 And in those filings, they're describing

1 He is going to give you his opinion on
2 what the reasonable royalty per order or transaction
3 should be, and he will explain this in detail. It's 80
4 cents for the '314 patent or the '492 patent together;
5 40 cents for the '639 patent; all in a dollar twenty.

6 Now, you're going to hear from Newegg
7 that we're ripping them off; that this is just an
8 unconscionable amount of money, because when you take
9 the dollar twenty, and you multiply it by the
10 two-and-a-half approximate years that we say they owe us
11 royalty for, last year, 12 million transactions, when
12 you add that all up, you come up with a big number.

13 I'm not denying \$34 million is a big
14 number. But why is it a big number? Not because we're
15 doing anything improper or overreaching; it's a big
16 number simply because the extent, the breadth of
17 Newegg's use of the technology, 2-plus billion dollars a
18 year, that's the reason the number is so big.

19 Last point. As His Honor told you, we
20 don't have to prove the patent valid; they've got to
21 prove it's invalid. They have all sorts of different
22 arguments that you heard His Honor mention that they may
23 bring up. Whatever they bring up that they previously
24 told us about, we will respond.

25 The gentleman on the screen right now,

1 P R O C E E D I N G S

2 COURT SECURITY OFFICER: All rise.

3 (Jury in.)

4 THE COURT: Please be seated.

5 All right. Mr. Adamo, you may begin.

6 MR. ADAMO: Thank you.

7 Your Honor, Soverain Software calls as
8 its first witness Dr. Jack Grimes.

9 THE COURT: All right.

10 MR. ADAMO: Your Honor had swore
11 Mr. Grimes earlier, and I hope I wasn't being
12 presumptuous; but in the interest of saving some time, I
13 had asked him to come up and be seated in the witness
14 box.

15 THE COURT: That's an excellent idea. I
16 appreciate you doing that.

17 MR. ADAMO: All right. May we proceed,
18 Your Honor?

19 THE COURT: Yes, you may.

20 MR. ADAMO: Ladies and Gentlemen,
21 Dr. Grimes; Dr. Grimes, Members of the Jury.

22 MR. GRIMES: Good afternoon.

23 JACK GRIMES, PLAINTIFF'S WITNESS, SWORN

24 DIRECT EXAMINATION

25 BY MR. ADAMO:

1 Q Where do you live?

2 A I live in Sparks, Nevada.

3 Q And what have you been asked to testify about
4 today as you understand it, Dr. Grimes?

5 A I'm giving some material -- I've prepared a
6 tutorial and some background information, but the main
7 purpose is to -- is to present a comparison of the
8 claims of the three patents-in-suit and the way the
9 Newegg system works.

10 Q Do you feel you're qualified to give an
11 opinion to the jury in this case, Dr. Grimes?

12 A Yes, I do.

13 Q Why?

14 A Well, I have had quite a bit of industry
15 experience, working in the industry, regarding payments.

16 MR. ADAMO: Ms. Ferguson, is the
17 microphone on, or Dr. Grimes just needs to get a little
18 closer?

19 All right. Doctor, if you can lean in a
20 bit.

21 THE WITNESS: Okay.

22 MR. ADAMO: And, Ms. Ferguson, can we ask
23 for the lights, please, ma'am?

24 Thank you very much.

25 Q (By Mr. Adamo) Dr. Grimes, I'm going to put up

1 on the display system, but you should have a copy of it
2 in your binder there as well, a copy of a document that
3 is in evidence, Exhibit 7.

4 Do you recognize that?

5 A Yes, I do. This is my resume, or sometimes we
6 call it a CV for curriculum vitae.

7 Q Is it pretty much up to date?

8 A Yes, it is. The date on this is last year,
9 and it's substantially the same as it was then.

10 Q If you would, could you summarize your
11 educational background for us, please.

12 A Yes. I received three degrees in electrical
13 engineering; a BS, an MS, and a Ph.D., from Iowa State
14 University. And when I got my Ph.D., my minor was in
15 computer science.

16 Q Any other education, formal education, Doctor?

17 A Yes. About 10 years later, I received a
18 second master's degree in experimental psychology that
19 dealt with design of computer and user interfaces.

20 Q What is your recent work focused on?

21 A The -- well, in terms of work experience?

22 Q Well, what -- let's just say since the
23 mid-1990s, what have you -- what have you been working
24 on?

25 A Oh. I was -- I've been involved in working in

1 the industry for, you know, 30-some years. And in the
2 mid-1990s, I worked for two payments companies, a small
3 company called IC Verify and a -- one of the most
4 well-known companies in the world, Visa International,
5 Visa, the credit card company.

6 Q All right. Let's jump by IC Verify then and
7 talk about Visa International. What position did you
8 hold with Visa?

9 A When I was with Visa, I was a senior vice
10 president, and I was responsible for several areas,
11 including architecture of the back-office systems, as
12 well as the Smart Card Program.

13 And I had a development group developing
14 software for Smart Cards and had a small group dealing
15 with internet transactions for internet commerce. It
16 was called Secure Electronic Transactions. It was a
17 very high-security payments system designed for use on
18 open networks, such as the internet.

19 Q Did you leave Visa and then go the work for a
20 company called ServiceHub, Doctor?

21 A Yes, I did. ServiceHub was a startup, and
22 their -- they had a combination of a web system, and
23 they used web browsers, which at the time were very new
24 and were on the cell phones.

25 So it was a communication between the

1 service -- the web service on the internet and the
2 browser on the cell phone. The company dealt with
3 dispatching, like courier services.

4 Q And what position did you hold there?

5 A I was the chief technical officer at
6 ServiceHub.

7 Q All right. Currently, what do you do for a
8 living?

9 A Well, currently, I'm semi-retired, so I'm -- I
10 do some litigation consulting support, which is why I'm
11 here today, and I also am on the board of a startup
12 company, and I do some other minor consulting.

13 And then I do the things -- semi, I do the
14 things retired people do. I play racquet ball in the
15 mornings and go hunting in the hills of northern Nevada
16 and so on.

17 Q Would you care to adopt me, Doctor?

18 MR. ADAMO: All right. Sorry, Your
19 Honor.

20 Q (By Mr. Adamo) What types of -- you said you
21 did legal consulting services. Tell the Ladies and
22 Gentlemen of the Jury, if you would, what type of
23 services that involves.

24 A That involves -- I have an office at home, and
25 that involves primarily doing analysis work. I do lots

1 of reading of documents that are produced in patent
2 litigation, such as this one; and then I form opinions
3 about, much like this case, do the claims of the
4 patent -- given the Court's construction for what the
5 terms mean in the claims, does that match up or does it
6 not match up with the -- with the way that the accused
7 systems operate.

8 Q Before you started your work on this lawsuit,
9 did you ever consult on projects involving internet
10 commerce or what I was calling earlier online shopping?

11 A The primary work I did prior to this case was
12 when I was at Visa, and we dealt with the transaction,
13 the payment portion, of internet -- internet commerce
14 systems.

15 Q Have you made presentations at scientific
16 meetings during your career relating to internet
17 commerce?

18 A Yes, I have. When I was with Visa, I made
19 presentations internationally, but the one I remember
20 most was a particular meeting in Southern California
21 where I talked about the electronic transaction effort
22 that Visa was doing.

23 The project at Visa was a joint effort between
24 Visa, MasterCard, Microsoft, and Netscape.

25 Q Professional societies or organizations,

1 Dr. Grimes, what involvement with those types of groups
2 have you had, briefly?

3 A For decades now, I've been a member of the
4 IEEE, which is Institute of Electrical and Electronics
5 Engineers, which is primarily a professional association
6 of primarily hardware people, really electrical
7 engineers.

8 And I also belong to ACM, which is sort of the
9 software counterpart, if you will. And both
10 organizations deal with all aspects of computers, but
11 the ACM is primarily concerned with programming
12 computers and computer software issues.

13 Q Does your previous experience, in your view,
14 relate to the issues that we've asked you to testify
15 about in this case?

16 A Yes, it does.

17 Q In what fashion?

18 A Well, I've dealt with the -- with the issues
19 about internet commerce, in particular, how the payments
20 are done.

21 And Visa, for example, is the -- is just
22 paranoid about security. They -- they're very concerned
23 with the security of transactions, because they're owned
24 by banks. Banks are very conservative organizations.

25 And so I became -- very, very heightened

1 awareness of the issues associated with doing proper
2 transactions and making sure that the transactions were
3 handled in a secure manner so that someone eavesdropping
4 on the communication would not be able to intercept any
5 of the information.

6 Q Have you ever testified as an expert in a
7 lawsuit before as you're doing right now?

8 A Yes, I have. I've been involved in testifying
9 in two previous jury trials and at four ITC hearings,
10 which are what you guys refer to as trials, but
11 they're -- they have all the characteristics of a trial.
12 There's just no jury involved.

13 So those six locations, there was testimony
14 much like I'm giving here today in terms of the format.

15 Q I think earlier counsel for Newegg
16 characterized you as a professional expert. Do you
17 typically get paid to testify, Doctor?

18 A No, I do not get paid to testify. I'm paid
19 for my time, basically. It's a -- I work by the hour
20 essentially. And I provide my opinions about the
21 results of my analysis, and I get paid for the time I
22 spend doing that analysis, basically, and here today
23 describing the results of them.

24 Q Are you getting paid to appear today in this
25 case?

1 A Only in terms of the -- my hourly -- hourly
2 pay.

3 Q Does your -- as you understand things, does
4 your compensation depend on what conclusions you reach
5 or whether Soverain wins this case?

6 A No, it does not. Does not depend on that at
7 all.

8 Q All right. Let me the turn your -- thank you,
9 Doctor. Let me turn your attention now to the specifics
10 of the subjects that we're involved with here today.
11 I understand you've prepared a slide as part of your
12 PowerPoint presentation where you're going to describe
13 what you're here to testify about.

14 Am I recalling that correctly?

15 A Yes.

16 MR. ADAMO: Would you bring that slide up
17 on the system.

18 Q (By Mr. Adamo) And then explain to the Ladies
19 and Gentlemen of the Jury what topics you're going to
20 cover in your testimony.

21 A I have these four topic areas.
22 First of all, I'll try and supplement some of the
23 tutorial information that you've already heard from
24 Judge Davis. And I have one slide, which is a brief
25 background of the Newegg system.

1 Then I thought it would be helpful to go through a
2 purchase example. I made several purchases on the
3 Newegg website, and this is one of them that I took
4 great detailed records of, and I want to give you
5 some -- I won't go through all the slides of that, but I
6 want to give you a sample of what it's like, in case you
7 haven't yet purchased things from Newegg.

8 But the bulk of my material for today is in
9 Section 4. In other words, the main reason for me being
10 here really is to give you the results of my analysis
11 where I took the claims, the Court's definition of what
12 the terms mean, the description we got from Newegg about
13 how their system works, and I made a comparison to see
14 if they matched.

15 And I'm here to present the results of that.
16 That's probably -- oh, probably three-quarters of the
17 time that I'll be presenting today will be just on Topic
18 No. 4.

19 Q In your -- in your book --

20 MR. ADAMO: And I'm going to ask to have
21 this put up on the presentation system.

22 Q (By Mr. Adamo) Do you have a copy of
23 Exhibit 2, which should be a copy of the '314 patent?

24 A Yes, I do.

25 Q All right. Is Exhibit 2, in fact, a copy of

1 the '314 patent?

2 A Yes, it is. This is the -- Exhibit 2 is the
3 '492 patent.

4 Q Oh, I'm sorry. All right. '492. Look at
5 Exhibit 1 then. Hopefully, that's -- there. That's the
6 '314 patent.

7 A Yes. Exhibit 2 is the '314 patent.

8 Q All right. I think we're talking sideways
9 here. Let me -- I've confused things.

10 Exhibit 1 is the '314 patent, Doctor?

11 A Yes, that is correct.

12 Q And Exhibit 2 is the '492 patent?

13 A Yes, that is correct.

14 Q All right. Now, were you in the courtroom
15 earlier where there was some discussion about
16 reexaminations for both of these patents?

17 A Yes, I was.

18 Q All right. Would you look at -- well, let's
19 try Exhibit 4 first and see if that's one of the two
20 reexamination certificates.

21 A Yes. Exhibit 4 is the reexamination
22 certificate for the '314 patent.

23 Q Do you have an understanding of what a
24 reexamination is?

25 A Yes. Well, as was described earlier,

1 basically, the Patent Office took a second look at the
2 validity of the '314 patent. And this is the results of
3 their effort, which is that the claims of the '314
4 patent were -- were, again, confirmed as being valid.

5 And in addition, there were other claims that
6 were also allowed.

7 Q All right. Would you look in your binder at
8 Exhibit 5, which, hopefully, is the reexamination
9 certificate for the '492 patent; is that correct?

10 A Yes. The story is the same here. This is --
11 again, there were questions about the validity of the
12 '492 patent, and the Patent Office issued this
13 certificate which confirmed the earlier claims of the
14 '492 patent and then also granted some additional
15 claims.

16 Q All right. And would you look in your binder
17 and tell me which exhibit the '639 patent is, if you
18 don't mind, Dr. Grimes? I know it seems to be a little
19 less than clear.

20 A Yes. That is Exhibit 3.

21 Q 3. All right.

22 And you've also studied the '639 patent,
23 correct?

24 A Yes, the patent.

25 Q Is there a reexamination certificate for the

1 '639 patent?

2 A No, there's not. The '639 was issued very
3 recently, in 2007, and so there have been no requests
4 that I know of before the Patent Office to re-examine
5 the '639.

6 Q In the '639 patent, are there pages where the
7 art that was looked at by the Patent Examiner appear?

8 A Yes. There's a few on the cover page or the
9 first page, but the second page is -- and the third page
10 and the fourth page are completely devoted to -- five,
11 six, seven pages are completely devoted to other patents
12 and publications that were considered before the
13 granting of the '639 patent.

14 Q Can you generally describe for us, in your
15 view, what the subject matter of the inventions of the
16 three Soverain patents is?

17 A Yes. The '314 and the '492 patent deal with
18 the -- a network-based sales system. The sales system
19 includes both the ability to purchase products and pay
20 for them -- select them and pay for them, as well as the
21 ability to find out about history of the products that
22 you've purchased in the past.

23 Q And what does the '639 patent deal with, to
24 your understanding, Dr. Grimes?

25 A The '639 patent is called the session ID

1 patent, and it deals essentially with underlying
2 mechanisms that allow the communication to occur in an
3 effective manner between the client computer, which is
4 the -- let's say in your home -- home family room, and
5 the server computer, which is located in -- someplace in
6 cyberspace.

7 Q I used the term session during my opening
8 statement for the jury. Does the '639 patent have
9 anything to do with session management?

10 A Yes. The -- as was described earlier, there
11 was a basic problem in the way that the internet
12 operated if you wanted to try and do something like a
13 sales system.

14 If all you wanted to do was to retrieve
15 documents, then the internet worked just great. And
16 that was the primary use of it for a long time.

17 And then when they wanted to build an internet
18 sales system, then they ran into this characteristic of
19 the internet that -- that it didn't really keep track of
20 where the previous request came from.

21 So when it got a second request, it didn't
22 realize it was from the same -- the same computer
23 system.

24 Q Thank you, Doctor.

25 I'd like now for you to focus on what you said

1 you were going to help us all out with, the tutorial on
2 the subject matter that the patents deal with.

3 Why don't you start, if you would, by
4 explaining in non-Ph.D. terms, if you can, what the
5 internet is.

6 A Certainly.

7 The internet is a network that just
8 interconnects computers and other networks. So it's --
9 it's -- that's why it's the internet rather than just
10 network. The internet accomplishes both things.

11 Here's a structural diagram that describes the
12 kinds of connections that can occur. There are clients,
13 which represent computers that you or I may use that are
14 either in our office or at home.

15 And the internet is the -- you know, the
16 wiring in our house that connects us to this cloud
17 diagram here called the internet. The internet
18 basically connects all computers together, okay, and
19 allows communication to occur among any -- any of them,
20 between any client and any server.

21 The servers here represent resources on the
22 network. For example, the first -- the one on the left
23 here could represent -- I don't know -- the Weather
24 Channel and weather.com.

25 And you might go there to find out if we're

1 really going to have a thunderstorm this afternoon or
2 not. It might show the radar, for example, for the
3 Weather Channel.

4 The other application server next to it has
5 another server attached to it, database server. This
6 might represent, for example, the Patent & Trademark
7 Office. It turns out, if you go to uspto.gov, the
8 Patent Office website, and put in a patent number, you
9 can actually obtain a patent.

10 So there have been millions and millions of
11 patents granted, and so those are all stored in this
12 database, which is attached to a database server.

13 So that's an example of a pretty powerful
14 application server.

15 Q Just so I'm clear on this and I've confirmed
16 this for the Ladies and Gentlemen of the Jury, a client,
17 as you're showing on your slide right at the moment, is
18 a computer?

19 A Yes. These are actually all computers. The
20 client is a computer which is -- has software on it that
21 allows it to send requests to --

22 Q Is the internet open to the public?

23 A Yes. The internet is, in fact, a public
24 resource. You can obtain free access to the internet by
25 going to certain places. Like, you know, the downtown

1 of some cities have free internet access. Some
2 restaurants have it.

3 Or if you want your service at home, you can
4 even pay for a higher speed service and have it -- have
5 it at your home.

6 But the internet per se, the internet itself,
7 is, in fact, free.

8 Q The worldwide web, would you tell us what you
9 understand that to be?

10 A Well, the worldwide web is often used
11 synonymously with the internet, just because the web is
12 such a popular use of the internet.

13 But the worldwide web is technically an
14 application that uses the internet. Sometimes people
15 refer to the use -- refer to the web as the internet and
16 the internet as the web. And that's a perfectly
17 reasonable thing to do, because the web is such a
18 popular way of using the internet.

19 Webs have -- they're worldwide literally, and
20 they contain a browser on your computer, as was
21 mentioned earlier today, and when you send the browser
22 to a particular location or the particular website, the
23 website returns a page, such as we have shown here.

24 These pages are pretty nice-looking. In other
25 words, they're not just text, like they used to be.

1 They contain pictures, images or photographs and icons,
2 as well as text, as well as sounds sometimes.

3 You can -- you know, you can go to -- the
4 other night I went to a web location that was
5 broadcasting a hockey game. So sometimes it's the sound
6 that's the most important.

7 But these web pages also, importantly, contain
8 this complicated term called a hypertext link, as you
9 just wanted to just call it a link this morning. Links
10 are really connections to other web pages.

11 So, for example, I went to the hockey website,
12 and on that website was a link that said, you know, some
13 radio station, so -- and it was underlined. And so I
14 clicked on it, and sure enough, I started hearing the
15 announcers broadcasting the hockey game.

16 You can tell -- sometimes it's a little hard,
17 by looking the page, to tell what are links and what are
18 just text, but when you move your mouse over the
19 particular regions of the page, it will change from a
20 pointer into a hand, and that tells you -- that tells
21 the user that it's a link.

22 And so then if you click the mouse at that
23 point, you will be taken to a web page. What happens
24 underneath the -- underneath the cover, so to speak,
25 is -- is that the click generates a request; the request

1 goes out over the internet to the location that it's
2 sent to; and then the request returns a response, which
3 is probably another web page, which would then be
4 displayed on your screen.

5 So there's lots of ability to find out
6 information on the internet by using these web pages
7 with these links on them.

8 Q Now, let's just briefly go back to web
9 browsers. I don't want to beat this to death, but
10 just -- could you generally tell us what a browser does?

11 A Yes. A browser is an application that you
12 would load on your computer and run, and then the
13 browser allows you to receive and display web pages.

14 And the web pages take these actions when you
15 click on various links on the web page.

16 There's a second important thing for us today
17 that web browsers do that a lot of people are just not
18 aware of, and that is, is that automatically, if the
19 browser has been set up to operate this way, and
20 typically they are, the browser automatically receives
21 information from the website that you connect to, and it
22 stores this information.

23 It's called a cookie. I have no idea why this
24 is called a cookie, by the way. It seems to me like a
25 pretty odd term. But it's called a cookie. And the

1 cookie is stored by the browser on the client computer.

2 And the next time that you make a request to
3 the same website, the cookies that the browser stored
4 locally are, in fact, sent back with your request to the
5 server.

6 And each time that you are seeing displayed
7 new web pages under the covers, so to speak, these
8 cookies are traveling back and forth and are -- when
9 they're received by the client computer, they're being
10 stored on the -- on your local hard drive.

11 Q All right. Mr. Sayles made a big point in his
12 opening statement about cookies and how they're going to
13 demonstrate why Newegg doesn't infringe, so I'd like to
14 spend a little more time with you about cookies.

15 Mr. Sayles characterized a cookie as a flat
16 file. Is that accurate?

17 A Yes. A cookie is just a string of characters.

18 Q So XYZGQ1 could be a cookie?

19 A Yes. And the cookie has a name. And so the
20 name, plus the information related with that name, are
21 stored in a file called the cookie file on the client's
22 computer.

23 Q And the -- okay. So the client computer --
24 I'm sitting at home. I'm talking to a -- to a website.
25 Let's just -- for the sake of argument, amazon.com.

1 Where does the cookie come from in the first place?

2 A The cookie comes from amazon.com servers.

3 Q And then it gets sent into my computer?

4 A Right. It comes along with the web page,
5 basically. So if you click on a product -- this is true
6 for Newegg. It's true for really any web server.

7 When you click on a link that causes a web page to come
8 up, the web page comes to your computer, obviously, so
9 it can be displayed, but it comes along with cookies
10 almost always, and those cookies are stored locally.

11 Q So the -- the computer that I'm trying to talk
12 to, to buy something from, puts this thing together and
13 shoves it into my computer?

14 A Yes. I have a diagram here that's probably a
15 little more --

16 Q Okay. Hopefully, better than talking about
17 shoving things into computers.

18 A A little more clear.

19 Q All right. Could you explain to us what this
20 diagram shows with regard to the operation of the
21 cookies, please?

22 A Yes. This -- this deals with the --
23 essentially, the network communications.

24 So you're at the client and you click on link.

25 Okay. The link then causes a service request to be

1 generated by the client, which goes over the internet to
2 the server. The server then -- that's what servers do,
3 is they respond and provide service for requests.

4 So the server sends back a web page, let's
5 say, and along with the web page, it returns cookies
6 associated with your request to the server. And those
7 cookies then are stored in this file, cookie file, what
8 was called a flat file earlier. It's a cookie file on
9 the client's side.

10 Then with additional requests -- you might
11 click on more links, for example. Every time you send
12 another request and another request and another request,
13 every request, the browser automatically attaches the
14 cookies that it has stored that it received from that
15 server to that request and sends those cookies back to
16 the server.

17 Q All right. Later on today, hopefully not too
18 much later on, when we get into the details of the
19 Newegg system, have you got some animations and some
20 other things that you've prepared so the jury can
21 actually see this whole thing work more or less in real
22 time?

23 A Yes, I do. The details of how the cookies
24 work are going to turn out to be very important in this
25 case, so I'll spend more time on that later.

1 Q All right. This point about how cookies work
2 in the Newegg system, that's what I mentioned, if you
3 recall, during my opening, was going to be one of their
4 arguments about why we're not responsible for
5 infringing -- or I'm sorry -- we don't infringe at all,
6 is that how you understood it?

7 A Yes.

8 Q And you've looked at this issue?

9 A Yes, I have.

10 Q All right. Well, give us a little bit of a
11 preview. In your view, do the cookies, as they function
12 in the Newegg system, mean that Newegg doesn't literally
13 infringe the claims in these patents?

14 A No. The cookies that -- the way Newegg
15 operates with them, in fact, meet the requirements of
16 the claims -- certain of the claim elements of the '639
17 patent.

18 Q You heard mentioned earlier today about
19 literal infringement and Doctrine of Equivalents
20 infringement. In your view, Dr. Grimes, does the
21 presence of the cookies block literal infringement here?

22 A No. The use of the cookies in the particular
23 way that they're used at the Newegg website matches
24 literally the requirements of the claim, based on the
25 Court's construction for how those -- what those terms

1 mean.

2 Q All right. As a -- as a belt and suspenders,
3 if I can put it that way, did you also do a Doctrine of
4 Equivalents analysis about the cookies?

5 A Yes, I did. With respect to a particular
6 claim that -- that was in dispute, I did.

7 Q And where did that come out?

8 A Well, it turns out that they also match under
9 the Doctrine of Equivalents.

10 Q All right. Let's get now down to the -- to
11 what really counts here, where the rubber meets the
12 road. Let's talk about the Newegg's system. I think
13 that was one of the items on your -- on your list.

14 A Well, I had a few --

15 Q What do you mean by Newegg system?

16 A Well, I had few more tutorial elements here --

17 Q Oh, I'm sorry. Then let's go back to the
18 tutorial.

19 A -- which I may have already covered.

20 I talked about web browsers and servers
21 communicating. One of the important things that will
22 come up later is the -- is how do they communicate; in
23 other words, what language do they use, so to speak?

24 Q Okay.

25 A And the answer to that is, is that they use a

1 protocol called the hypertext transfer protocol. This
2 is more alphabet soup here. This is -- it's called
3 http, and that's what it stands for. And this is the
4 format for the messages.

5 In other words, you can send a string of
6 characters to a server, but the server has to be able to
7 understand what the string of characters mean that are
8 in your request.

9 And so the http protocol defines what these --
10 what these commands and requests are.

11 Q Is protocol, in this instance, just a fancy
12 word for rules or sort of a dictionary of meanings of
13 terms?

14 A Yes. Rules of communication is a good way to
15 think of what http is.

16 And then I mentioned earlier -- or maybe it
17 was mentioned earlier as well in the -- in your opening
18 that the problem solved by the '639 patent is really
19 that the characteristic of the internet, that the
20 request and response is fine; but then a new request
21 comes, and the server can't actually realize -- doesn't
22 actually realize that it came from the same place that
23 the request right before it came.

24 And if you have -- if the role of the internet
25 is just to provide documents, then a request and a

1 response is just fine. But if you're going to try and
2 do something involving a sustained interaction, then
3 there's a technical problem that if you address it, is
4 going to make life much simpler for doing things like
5 internet commerce.

6 Q I think I mentioned during my opening
7 statement the concept of state and whether the
8 web/internet combination was stateless.

9 Does that have anything to do with what you're
10 talking about?

11 A Yes. That's -- that's the way -- that's the
12 way the technical people talk about what the problem is.
13 The shorthand for it is, the internet is stateless. And
14 that doesn't have much meaning for a lot of folks, and
15 so that's why I described it as being executed
16 independently.

17 And when you get multiple requests, it's
18 important in an internet commerce setting to know that
19 you're getting multiple requests from the same client
20 computer.

21 Q The last subject that I inadvertently jumped
22 over that you wanted to talk to us about was issuing a
23 request, and then what a URL was.

24 And I see you put that slide up. Would you
25 explain that to the Ladies and Gentlemen of the Jury for

1 me, please?

2 A Yes. The -- the browser has to have a
3 destination in mind. In this case, the example is the
4 person here is in the midst of typing www.usa.gov, which
5 is -- which is the location of a website.

6 So as soon as the O and the V show up, then
7 the person hits -- they may hit the return key. They
8 may click on a button. But this is known as the
9 beginning of the http request.

10 And so what happens is, is the request is sent
11 to this website address for a -- basically, a default
12 page. If no other information is sent, it returns
13 whatever is the default page for this particular
14 website.

15 And you can do this by typing in the address,
16 or sometimes you have a web page that already has a link
17 on it. That accomplishes the same thing, when you click
18 on the link or click on a picture.

19 For example, you might have a weather map of
20 the United States, and you click on Louisiana, and so it
21 then brings up the weather for Louisiana. When you
22 click on Louisiana, that actually is a link that brings
23 back the next web page.

24 Q All right. Now are we ready to talk about
25 Newegg's system, Dr. Grimes?

1 A I think I've just -- just gave -- here's some
2 more examples of URLs, but we've already --

3 Q Okay. I guess not.

4 A I think this the last --

5 Q This is your last one; then we've got to keep
6 going here. Come on.

7 A I think the horse is dead.

8 Q All right. Well, now can we talk about
9 Newegg's system? Thank you.

10 Would you describe what you mean by the term
11 Newegg system, please?

12 A Yes. I have a picture here. In fact, we're
13 going to be using this so much, that if I could have --
14 I had a -- sort of a larger version of this made up.
15 And I'll be talking about it and pointing at it, and
16 we'll see it show up over and over again. So I had a
17 big board made of it.

18 This is -- this is a description of the Newegg
19 system. One of the reasons it's so complicated is
20 because Newegg has a great, powerful system. I mean,
21 I've bought things on the Newegg system, and in fact,
22 it's a very powerful system.

23 So in the -- in the -- there's several things
24 I wanted to point out in particular.

25 For example, in the upper left-hand corner

1 here, is an icon that we've seen before. This is the
2 customer computer. So this is also called the client,
3 the client computer. It's also called the buyer
4 computer.

5 And those basically all refer to the same
6 thing. It's a computer, like a personal computer you
7 would have in your office or in your home, and it's the
8 particular machine that runs the browser.

9 This is connected over the public internet,
10 and then it connects to the green area here, which
11 represents the -- basically, the data centers that
12 Newegg operates.

13 In particular, one of the data centers is this
14 blue area right here (indicates), and you can see in the
15 lower right-hand corner, it says data center. And this
16 is the E3 Colo data center.

17 So this describes symbolically or structurally
18 what are the computers that are contained in the Newegg
19 data center.

20 Q Does the diagram depict a server, Dr. Grimes,
21 the one we're looking at right now?

22 A It's really a server system that contains many
23 servers.

24 These -- for example, this area right here
25 (indicates), we'll be spending quite a bit of time with.

1 This highlighted area is the collection of servers that
2 perform the shopping cart function, shopping cart
3 computer.

4 And then on the right-hand side is the
5 shopping cart database, which is where the shopping
6 carts are stored eventually or where the payment occurs.
7 So we'll be dealing with these, and these are -- all
8 contain many, many, many, many computers.

9 Q Are the customer computers and the Newegg
10 server system connected? Is that done by the internet?

11 A Yes, that is done by the internet, and that's
12 represented by this black line on the left and across
13 the top and this same cloud here called public internet.

14 This -- this, by the way, is -- this is a
15 Newegg diagram. In other words, Newegg provided this to
16 us as part of the lawsuit. So this is their description
17 of what the Newegg system -- system is.

18 Q All right. There's a box in there that looks
19 like it says netscaler or -- it's vertically above the
20 firewall.

21 Do you see that?

22 A Yes.

23 Q Could you tell us briefly what that is?

24 A Yes. The netscaler is in this connection, the
25 network connection that comes from the computer into the

1 servers. And the netscaler essentially routes the
2 incoming messages.

3 Newegg has a number of servers, and you can
4 address them. For example, the one at the top labeled
5 www here stands for worldwide web, and this is where you
6 access all of the product information.

7 When you decide to do a purchase and put
8 things in a shopping cart, then the requests that come
9 in are routed by the netscaler into this block, which is
10 labeled SSL, and that provides the shopping cart
11 functionality.

12 Q And you said a few minutes ago, there's a
13 shopping cart database also shown on this diagram?

14 A Yes, that's correct. DB is just a shorthand
15 notation for database.

16 So the shopping cart computer -- this arrow
17 right here between the two is the network connection
18 (indicates), so the shopping cart computer is connected
19 directly to the shopping cart database.

20 Q There's some round symbols on the -- almost
21 look like a sewing thimble to the right of the boxes
22 that represent, I guess, computers and the bigger box
23 that says shopping cart database.

24 What do those little round
25 cylindrical-looking things represent? I don't know if

1 you can actually see these or not. These are really
2 tiny. Maybe we can blow them --

3 There we go. There we go.

4 MR. ADAMO: Thank you, Mr. Gooden.

5 A These little cylinders are intended to
6 represent computer center hard disk drives. It's kind
7 of a traditional notation that's used to represent -- in
8 a diagram like this, to represent a very large storage
9 capability.

10 And so they draw them as cylinders, because at
11 one point in time, they literally were cylinders. They
12 were, you know, perhaps a couple of feet in diameter and
13 maybe 3 or 4 feet high, and that's literally what they
14 looked like back a long time ago.

15 So this same kind of an icon has been used
16 ever since then to represent mass -- large amounts of
17 storage.

18 Q (By Mr. Adamo) I think on your list of
19 subjects that you wanted to talk about today, you had a
20 purchase example.

21 Do you recall that?

22 A Yes, I do.

23 Q All right. Now, let's talk about the purchase
24 example now.

25 The material you've got up on the stand with

1 you, there should be an Exhibit 12, which should be
2 materials relating to a purchase that was done sometime
3 in June of 2009.

4 Is that stuff handy?

5 A Yes, it is.

6 You'll be happy to know we're not going to go
7 through every page of this. The -- the top two
8 volumes -- binders here represent the -- all the details
9 of the purchase example.

10 It includes all the web pages that I looked
11 at, and it includes all of the traffic that occurs when
12 you click on links to navigate the website or to add
13 items to your shopping cart, and it includes other
14 information, such as the cookie file that's been
15 mentioned a couple of times. It includes e-mails that I
16 received and confirmations.

17 In short, this is a complete record, with all
18 the detail that I knew of that exists of a purchase
19 example.

20 Q All right. Now, in view of the fact that
21 you've just promised the jury that we're not going
22 through all of that paper, is it a safe bet that you've
23 got some slides that summarize this, and you can talk
24 about this shopping example that you did?

25 A Yes. The shopping example that I did had a

1 total of, like, 35 web pages, and I've selected maybe
2 half a dozen of them to kind of give you a flavor for
3 what the key things were that I did when I bought a
4 couple of items on the Newegg website.

5 Q All right. Just so we're all clear on this,
6 in June of 2009, you yourself got on a computer and
7 logged on to Newegg's website and bought some stuff, and
8 that's what is recorded in all of these two huge binders
9 that you're about to explain to us, hopefully, with some
10 simpler slides, right?

11 A Yes, indeed.

12 Q Okay. Why don't you walk us through the
13 slides then, Dr. Grimes, I guess starting from the
14 beginning and going through until you're completed with
15 the purchase example.

16 A So this is the -- sort of the beginning point.
17 I don't know if you can see it at the top or not, but at
18 the top, it says <http://www.newegg.com>.

19 And so that was typed in; and when I hit
20 enter, this is the page that showed up. So this is the
21 result of going to the Newegg website. So this is the
22 first page that you see.

23 Q All right. What happened next?

24 A Well, then I navigated around using some of
25 the -- clicking on some of these buttons, and I decided

1 I wanted to buy a cable, a cable and some software.

2 So this is the cable page that contained the
3 cable that I was looking for. It was a USB cable. And
4 right at the bottom of the page -- of -- right below the
5 cables I was interested in is this button called
6 add-to-cart.

7 And so I clicked on the add-to-cart button.

8 Q Okay. Then what happened?

9 A Okay. Then it gave me this page that said
10 this is the item that's been added to your cart, and
11 then it waited for me to, you know, take some further
12 action.

13 So I navigated to another portion of the
14 website that contained software, and I looked for -- I
15 was interested in a painting program, so I navigated to
16 this website that has -- a portion of the website that
17 has the Corel software on it.

18 And so this says Corel Paint Shop Photo Pro,
19 and it turns out this is downloadable software, so to
20 add this to cart -- my cart, I click on this button that
21 says download.

22 So that tells me that not only is it going to
23 add to the my cart, but also it's not going to come in
24 the mail. I'm going to, in fact, download the software.

25 Q And so what happened when you clicked that

1 button?

2 A So I clicked that button, and then it gave me
3 that other same message: It's been added to your cart.

4 A little bit later, I said, okay -- I'm
5 skipping a few pages here now. I said, okay, now its
6 it's time to, you know, buy it. I've selected the two
7 products. I found them. They're in my shopping cart.
8 And so I looked at my shopping cart and -- to see what
9 was there, and this is the page that shows up.

10 So this is the page that corresponds to the
11 shopping cart. And most importantly -- I mean, besides
12 listing the two products that I've just selected, most
13 importantly, at the bottom, it contains another button
14 called checkout.

15 Q All right. Did you click the checkout button?

16 A I clicked the checkout button.

17 Q And?

18 A And it said you have to log in.

19 So it turns out I'm an existing customer, so I
20 typed in my Newegg identification, which is my e-mail
21 address, my password, and then clicked submit, and that
22 allowed me to log in.

23 Q All right. And what happened when you clicked
24 the submit button?

25 A Well, the system, of course, knew that I was

1 checking out, and I can't just check out without the
2 system knowing who I am, so it asked me who I was.

3 Then it says, okay, if you want to check out,
4 well, here's all the payment information that we have
5 for you. This is the shipping address we have. This is
6 the credit card information we have to -- to finish the
7 payment.

8 And it asks me basically if this is all
9 correct, and if it is, then I click the continue button.

10 Q All right. So you clicked the continue
11 button?

12 A I clicked the continue button, and then it
13 gives me essentially information about the order. This
14 is going to be -- this is my last chance, basically, to
15 change anything.

16 It says here's the shipping information we
17 have. Here's the billing information we have. Here's
18 the products that are going to get shipped to you. Is
19 this okay?

20 And if it is okay, then at the bottom of this
21 page is a button called submit order.

22 Q And I assume that you clicked the submit order
23 button?

24 A Indeed, I did.

25 Q And what happened next?

1 A Okay. The next thing that happened was, I got
2 this thank you page. And it says: Thank you for
3 ordering from newegg.com.

4 And one of the options on this page is a
5 button in the lower right-hand corner to log out, and so
6 I logged out.

7 Q Okay.

8 A And then it gave me another page. There's
9 a -- there's a real pattern here of clicking buttons and
10 getting new pages and clicking buttons, getting new
11 pages. These are the requests and the responses between
12 my computer and the servers at the Newegg -- Newegg
13 service system.

14 So I clicked -- I logged out, and then it gave
15 me a message that says: Thank you. You are
16 successfully logged out.

17 Q Okay.

18 A So that really concluded the purchase example
19 that I wanted to -- to show to the jury.

20 Q Did you try to find out whether the Newegg
21 website would give you order history information?

22 A Yes, I did.

23 The other thing that's important to the case
24 is, in fact, the -- it's called statement -- hypertext
25 statement documents, which are documents that describe

1 the purchase transactions that have taken place before.

2 And Newegg has a facility to do that. To
3 access it, there's a -- now, this is at the bottom of
4 one of the pages. There's a number of things that you
5 can do, shopping help and things to do with your
6 account, and one of those is order history.

7 So that's underlined, and therefore, it's a
8 link. So I clicked on that link.

9 Q And what happened?

10 A Well, not surprisingly, I got my order
11 history.

12 So this is a display of the last four
13 invoices -- or the last four payments that were made --
14 payment transactions made on the Newegg website. And
15 each one of those invoice numbers here is underlined.

16 And as we now know, that means that that's a
17 link. And so one of the things that I could do is I
18 could get more details about that.

19 For example, I mean, this is the number, but I
20 might not -- maybe a month has gone by, let's say, and I
21 don't quite remember what the number was, but I want to
22 know what was in this invoice. So I click on this link,
23 and it provides me with more details.

24 And it turns out, yep, this was the -- it
25 wasn't the cable. This was the software that I

1 purchased. And so this gives me the order detail
2 associated with -- with that invoice.

3 Q All right, Doctor. Does this combination of
4 things that you've just shown us, does this complete
5 your purchase example that you had mentioned earlier on
6 the -- what you've now got up?

7 A Yes, it does.

8 Q All right. Let's get to the meat of it now
9 that we've got the background and you've demonstrated to
10 us that you've personally gone through the system and
11 run it yourself to see what you could see. Let's turn
12 to your main reason for being here today.

13 Have you reached any opinions regarding
14 whether Newegg meets the claims of the Soverain patents,
15 the three different patents-in-suit here?

16 A Yes, I have. I reached these opinions by
17 going through a particular process and --

18 Q Would you tell us what the process was?
19 You've got a slide up here, but would you tell us,
20 please?

21 A Yes. And the conclusion, not surprisingly, is
22 that yes, they meet the claims. But this is the process
23 that I went through, because you can't just, you know,
24 make assertions. You have to say, okay, what's the
25 evidence that you have?

1 And the evidence that I looked at has to match
2 the claims. So -- but that happens later.

3 The first process that I did was I started out
4 by reading the patent, not surprisingly. And the
5 associated prosecution history or file history, as the
6 Judge told us this morning mean the same thing.

7 That's all -- it's all the dialogue between
8 the patentee and the Patent Office during the generation
9 of the patent, and it results in the patent.

10 So I spent time studying both the patent --
11 like I read the patent so many times -- I've lost track
12 how many times -- but the patents and the prosecution
13 histories are an important part of the background and
14 kind of a starting point.

15 The next thing I did was reviewed -- I think
16 of this as the Court's dictionary, okay? It's called a
17 claim construction order, but I think of it as
18 dictionary. It says there's lots of terms in dispute,
19 and as a matter of law, these are the definitions I'm
20 supposed to use.

21 So it doesn't matter what I think they mean;
22 this is what the Court says they mean. So these are the
23 definitions that I applied in my analysis.

24 Another large component of my time was spent
25 reviewing Newegg documents. I mean, this, after all,

1 forms a large portion of the evidence that I need to
2 rely on to show the matching with the claims. And so I
3 spent a lot of time reviewing that.

4 Other things I can rely on turns out to be
5 statements made under oath by corporate representatives
6 of Newegg.

7 We met Mr. Wu this morning, and he was the
8 main corporate representative whose testimony I also
9 relied on in terms of understanding how the Newegg
10 system operated.

11 And I actually physically attended his
12 deposition and, of course, received a transcript --
13 transcript of it later, which I studied, and I reviewed
14 other Newegg deposition testimony. But Mr. Wu's was
15 really the most -- the most significant one.

16 And then as we talked about these two
17 binders -- and in fact, I've got four more binders that
18 describe two other purchase transactions, which we also
19 will not go through.

20 I studied the operation of newegg.com and
21 newegmall.com. One pair of these binders is a purchase
22 transaction I did at newegmall.com.

23 And then with all of this information and a
24 very messy office with paper piled all over, I was able
25 to then form the analysis that I did, comparing the

1 claims under the Court's construction with the
2 documentation and other evidence that I have from Newegg
3 and form my opinions about whether or not they match.

4 Q All right. Let's cut to the chase. Tell the
5 Ladies and Gentlemen of the Jury, if you would, please,
6 what the opinions were that you reached, Doctor.

7 A There are two websites, newegg.com and a more
8 recent one newegg.ca is Canadian. And those two
9 websites -- based on the testimony of Mr. Wu, is that
10 those two websites basically operate the same.

11 And they do operate the same for purposes of
12 my analysis and that those, therefore, meet all of the
13 elements of these two claims of the '314, these three
14 claims of the '492, and two claims of the '639 patent.

15 Q Was it your understanding from what you
16 reviewed, Dr. Grimes, that the Canadian website was, in
17 fact, hosted on the same servers here in the United
18 States that the newegg.com was hosted?

19 A Yes, it is. The -- this notion -- it's real
20 strange -- interesting, actually, the dot-com, you think
21 of, well, that's the United States. Well, no. It turns
22 out I know several websites in England that are dot-com
23 websites.

24 And here's an example of a dot-ca website that
25 you would think of would be in Canada which is not in

1 Canada. It's, in fact, in the United States.

2 One of the -- one of the sort of humorous
3 questions, trivia questions, is, what are the three most
4 important things to know about the internet? And the
5 answer is no location, no location, no location.

6 So you really have no idea physically where
7 these websites are when you attach to them. And here is
8 just an interesting example of that at Newegg.

9 You can address -- as long as the -- as long
10 as you type in newegg.ca, it takes you to a particular
11 server, and that server -- in this case, actually, I
12 couldn't buy anything there, because I do not have a
13 Canadian address.

14 So it really is -- looks like it's in Canada,
15 but, in fact, it's not.

16 Q What time period does your analysis apply for
17 with respect to the newegg.ca site?

18 A The newegg.ca website is relatively recent, I
19 think in the last year or two. I don't remember
20 specifically the dates of it, but it -- but the 2001 is
21 when the newegg.com website was initially brought
22 forward as we heard this morning.

23 Q In your summary of opinion slide that you have
24 up on the projection system right now, you also talk
25 about neweggmall.com. What's neweggmall.com, as you

1 understand it?

2 A Well, Newegg Mall is meant to refer to like a
3 shopping mall where you might go, and there might be a
4 huge store, which might be, you know, Macy's. But then
5 in the mall, there are all kinds of other stores of
6 other merchants selling other merchandise.

7 Well, Newegg Mall sets up to be the same
8 thing, so it's kind of a company operative arrangement
9 Newegg provides. Other merchants also sell merchandise
10 in the Newegg Mall.

11 Q Well, what time periods do you understand
12 it -- does your analysis of neweggmall.com cover?

13 A That's also relatively recent. I think within
14 the last year or two.

15 Q Have you prepared a summary of your newegg.com
16 system to each of Soverain's patents?

17 A Yes, I have.

18 Q Exhibit 21, would you take a look at that for
19 us and see if you can identify it?

20 A (Witness reviews exhibit.)

21 Q Would you tell us what Exhibit 21 is, Doctor?

22 A Yes. Exhibit 21 is a portion of the expert
23 report that I did, which provides detailed results of my
24 analysis of the comparison between the way the Newegg
25 system operates and the structures it has and the --

1 each one of the elements of the claims that are involved
2 in this lawsuit.

3 Q From which patent?

4 A This is -- Appendix C is for the '314 patent.
5 And there are two other appendices for the other two
6 patents.

7 Q Is Exhibit 22 the Appendix C that relates to
8 the '429 -- your analysis of the '492 patent?

9 A Yes, that's correct.

10 Q And is Exhibit 23 the Appendix C of your
11 expert report that relates to your analysis of the '639
12 patent?

13 A Yes, that's correct.

14 Q Did you prepare a summary for neweggmall.com
15 website?

16 A Yes, I did.

17 Q And you might look at Exhibit 31 in your book;
18 is that the summary?

19 A Yes. This -- this appendix here essentially
20 includes all three patents. I didn't do a separate
21 appendix for each patent, so this one has all three of
22 them.

23 Q Do you have Exhibit 29 handy in the binders
24 that you have there, Doctor?

25 A Yes, I do.

1 Q Could you identify that for us and explain
2 briefly what it is?

3 A It says separately bound, which means, to me,
4 get out of my chair.

5 Q Okay.

6 A So these are two of the other four binders I
7 mentioned. These binders correspond to the same thing,
8 all the detail, web pages, HTML traffic, everything
9 associated with my Newegg Mall purchase.

10 Q So you did an actual hands-on purchase
11 experiment, so to speak, with regard to the Newegg Mall
12 site?

13 A Yes, neweggmall.com, right.

14 Q Doctor, is it your opinion -- and I think you
15 had this on your summary slide we just had up there --
16 that newegg.com and newegg.ca, the Canadian site, meet
17 all the elements of the asserted claims? Is that, in
18 fact, your opinion?

19 A Yes, I didn't do the -- all of the claims for
20 the Newegg Mall. I did the ones that are listed here.

21 Q Claim 34 of the '314, Claim 15 of '492, and
22 Claims 8 and 78 of the '639?

23 A Yes, that's correct.

24 Q Judge Davis, a little earlier today, told us
25 about the claims and what their function was. Just to

1 make sure that you understand this the same way as the
2 Court did, what do you understand the function of the
3 claims in the patent to be?

4 A Well, here's an example of one of the claims
5 from the '314 patent. This is Claim 34 highlighted in
6 the background here. And I've taken the first portion
7 of Claim 34 so that we can see the text a little easier.

8 The claims are made up of a sequence of
9 limitations. The first one here about a buyer computer,
10 the second one about a shopping cart computer, and the
11 third one about a computer network. So I have to take
12 the full text of each claim element one at a time --
13 just because it makes it easier to follow -- I took them
14 one at a time. And I said, okay, does the Newegg system
15 provide all of the requirements of this claim
16 limitation? And if so, how can I show that, and what's
17 the evidence that I have that makes me come to that
18 conclusion?

19 So this was the -- the claims, essentially,
20 it's like a -- I like the example of a trespassing that
21 was used earlier.

22 The claims really define what the boundaries
23 are. In other words, one of the things that's required
24 of the patent is that it tell people: If you go within
25 these boundaries, then you're going to practice the

1 claim, and that's not allowed without some kind of a
2 license; or, you're outside the boundary, so everything
3 is fine.

4 So the claims have this role of identifying
5 what the boundaries are for the intellectual property
6 that is in the patent claims.

7 Q Doctor, do you understand what it means for a
8 claim to be infringed literally as compared to what it
9 means for a claim to be infringed under the Doctrine of
10 Equivalents?

11 A Yes, I do.

12 Q Tell us what you understand literal
13 infringement to mean.

14 A Well, literal infringement means that it's
15 very clear, and there really isn't much doubt, that the
16 way that the particular system works, in this case the
17 Newegg system, matches literally or precisely or exactly
18 the way the claim is written. And there's -- it's
19 really not open to much interpretation about what the
20 claim means; and given that interpretation, this is
21 what -- how the Newegg system matches that requirement.

22 Q Now, when you say matches, you told us a
23 minute or two ago about claim elements when you were
24 describing Claim 34 of the '314 patent. Is that what
25 has to be matched by the system that you're trying to

1 decide whether or not it infringes?

2 A Yes, that's correct. That's correct.

3 Q To your understanding, now, what does it mean
4 to infringe under the Doctrine of Equivalents?

5 A The patent system, if you will, basically had
6 decided that, as I understand it, that if you make
7 some -- some minor variation to the way the patent
8 describes it, that that's still within the boundaries
9 identified by the -- by the claim.

10 And so there's a separate analysis that one
11 goes through called the Doctrine of Equivalents to find
12 out if this variation, if you will, if it's a variation
13 in interpretation of what the claim means, if it still
14 falls within the boundaries of the claim. And that is
15 called a Doctrine of Equivalents analysis.

16 So you look at the two alternatives, and you
17 say: Okay, I understand there are differences, but
18 would these -- are these differences significant to a
19 person of ordinary skill in the art or is this just a
20 minor change?

21 And so the analysis that I did was to
22 determine whether or not there was any substantial
23 differences between the two -- between the two
24 alternatives that I evaluated.

25 Q When you did the analysis that we're going to

1 look at in a few minutes, with respect to the Doctrine
2 of Equivalents, did you understand that you had to
3 either literally or by equivalence still have to have
4 every element that the claim called out?

5 A Yes. It was mentioned earlier that, you know,
6 if you have ten claims, it's not enough to just practice
7 nine of them, you have to do -- or claim limitations;
8 you have to do all ten. And that is exactly the
9 methodology I applied. And that's why I took them one
10 at a time.

11 And then when I reached the end of the claim,
12 if everything was met, then my conclusion was that, yes,
13 this claim is matched, and, therefore, Newegg infringes
14 this claim.

15 Q And in the instance that we discussed a few
16 minutes ago where you did the alternative Doctrine of
17 Equivalents' analysis, how did you do that? Did you --
18 well, you tell us.

19 A Well, there's a three-part test that's done.
20 The claims have some kind of a function, some particular
21 way that it's done, and some particular result that
22 comes from the claim limitation. So you have to analyze
23 all three of those: The function, the way, and the
24 result.

25 And in the particular analysis that I did, the

1 function and the result were actually the same among
2 these two alternatives. The difference was in the way.

3 So I looked at the way that it's -- I think
4 it's done literally and the correct way to interpret the
5 claim, and I looked at the way that Newegg says, well,
6 no, you should look at it this way.

7 So I did okay. I did an analysis of the way
8 that they think it should be done. And I determined
9 that the way that I think the claim properly is
10 interpreted and the way the Newegg thinks it's
11 interpreted were -- the differences were insubstantial.

12 So there's essentially -- we will get into
13 more details later, but it's basically a design
14 alternative. The designers could do it this way or they
15 can do it that way.

16 And when you have a situation like that,
17 that's further evidence that the differences are
18 insubstantial. And if the differences are
19 insubstantial, then it still meets the requirement of
20 the claim under the Doctrine of Equivalents.

21 Q You're not a patent lawyer, are you?

22 A No. No, I'm not.

23 Q How did you word --

24 A It would interfere with my hunting in the
25 hills of northern Nevada.

1 Q I'm sorry?

2 A It would interfere with my hunting in the
3 hills of northern Nevada.

4 Q I'm sure that's not turning into a hunting
5 lawyer's bad joke.

6 A I'm sorry. This is serious business; I
7 shouldn't make light of that.

8 Q It is that, Doctor.

9 How did you learn about these patent law
10 concepts then that you were just talking about that you
11 apparently applied in doing your analysis to reach your
12 opinions?

13 A In all cases, they come from discussions with
14 the attorneys in the case. I've actually done the
15 Doctrine of Equivalent analysis several times before, so
16 I had some familiarity with it.

17 But again, on this case, I was again taught,
18 if you will, by the attorneys: This is what you should
19 do, this is the analysis you should perform, and then --
20 and then you tell us what the results are, which I did.

21 Q Over what chronologic time period, calendar
22 time period, did you analyze the Newegg system, or the
23 state of the Newegg system, I guess is what I'm trying
24 to ask you?

25 A Oh, golly, it was the better part of a year.

1 The documents were produced -- started being produced
2 quite some time ago. I don't even remember exactly
3 when. And that's when I really started my analysis.

4 Before that, I spent time understanding the
5 patent and the prosecution history and so forth.

6 Q Do you recall those various examples that --
7 the purchase examples that you told us about so far,
8 some of the purchase examples that you studied were done
9 by yourself, correct?

10 A Yes.

11 Q And were there any available for you to study
12 that had been done by somebody else at an earlier time?

13 A Yes. There was -- the other two binders the
14 remaining two of the six, which are also an exhibit
15 here -- were -- represented a purchase transaction that
16 was done by the attorneys perhaps, I think like a year
17 earlier, in 2008.

18 Q And your recent transaction was June of 2009?

19 A Yes.

20 Q Okay.

21 A Then I did a later one with the Newegg Mall.
22 It may have been around throughout the same time. But I
23 did basically two full purchase transactions.

24 Q It's April 2010. What information, if any, do
25 you have that the system, at least as of, let's say, as

1 of last month, March, was the same as what you analyzed
2 in the documents you looked at and the study you did in
3 2009?

4 A It's my understanding that the system operates
5 the same today as it -- as it did when I did my purchase
6 example in 2009. Actually, I did -- I did another
7 purchase later to buy some more cables. I mean, the
8 prices are very good on the Newegg website, I have to
9 tell you. So I went back and I bought some HDMI cables
10 for my television. So I did an additional transaction
11 in November -- I think it was November -- personally.
12 And it's my understanding it still operates the same way
13 today.

14 MR. ADAMO: Your Honor, at this point
15 we're going to now start going through in detail, claim
16 element by claim element, the various seven claims in
17 the three patents. Would you like to consider taking a
18 break at this point or should we just power on?

19 THE COURT: I think we're all right. Is
20 the jury okay? Anybody need a break?

21 All right. We will go ahead and see if
22 we can get through it.

23 MR. ADAMO: Just the anticipation is just
24 electric in the room for this next stage, Your Honor.

25 THE COURT: Everyone is waiting.

1 MR. ADAMO: We're just sort of like, yes,
2 let's go.

3 Sorry. It was the volcanic dust, Your
4 Honor. It obviously got to me.

5 THE COURT: You had that before you went.

6 MR. ADAMO: That's one. One of these
7 days I've got to learn, Your Honor, to not lead with my
8 chin in this courtroom.

9 THE COURT: All right.

10 MR. ADAMO: Thank you.

11 Q (By Mr. Adamo) All right, Doctor. Maybe we
12 should take -- I am in fear that we're going to knock
13 some of these --

14 A No, let's leave this one up.

15 Q Can I take the binders?

16 A Yes.

17 Q I am in fear you will knock those down?

18 A And I would like -- while we're moving here,
19 I'd like to have another chart -- chart put up.

20 THE WITNESS: Thank you, gentlemen.

21 Q (By Mr. Adamo) All right. I believe we've got
22 this set up, so we're going to do it in patent number
23 order from the last three digits. So let's start with
24 '314.

25 Briefly, I mean briefly, refresh us as to what

1 the '314 patent is about, as you understand it?

2 A The '314 patent is a network-based sales
3 system that essentially provides a complete shopping
4 experience. It allows you to go to a website, find the
5 products you want, purchase the products you want, pay
6 for them with a credit card or whatever, and then they
7 are delivered to your door.

8 Q Is this patent, as you understand it, just for
9 the idea of using a shopping cart on line?

10 A No. Shopping carts, I mean, are not a new
11 idea. We all use the metaphor of a shopping cart.

12 But the key thing about the '314 patent is
13 the -- is the ability to complete the transaction
14 online.

15 I mean, before, you would have to, you know,
16 you could go to Macy's website and find products you
17 wanted, then you would have to call Macy's and give them
18 your credit card over the phone; you'd have to fax them
19 information or something.

20 But this -- the '314 patent allowed you to
21 complete the transaction online without making a phone
22 call.

23 Q I used the phrase earlier "soup to nuts." Is
24 that apropos with regard to the '314 patent in your
25 view?

1 A It -- that's what I meant by complete --
2 complete shopping experience, yes. From beginning to
3 end, you don't need to leave your computer basically.

4 Q The claims of the '314 patent that Newegg is
5 accused of infringing, the ones you've studied, are
6 those system claims, method claims, or both?

7 A The '314 -- the first two patents essentially
8 have system claims. A system claim is basically
9 structural, and it deals with the capability of the
10 system. A method claim, which is in the last patent,
11 the '639 patent, deals with the operation of the system.

12 So the way I think of it is, if you have a
13 system claim, then the system has to have the capability
14 to do the operations that are described; and for a
15 method claim you have to actually show that it doesn't.
16 So the method claims deal with the process or the
17 operation -- actual operation of the system.

18 Q All right. Claim 35 is the first of the two
19 claims in the '314 patent. That's the one that's in the
20 original patents; and the later claim is the one that's
21 in the reexam, which I think we managed to figure out
22 earlier this morning.

23 Do you have a slide showing your analysis of
24 Claim 35?

25 A Yes. It starts here. This is Claim 35, and

1 you notice it's very short. Well, the reason it's short
2 is because of the first sentence. It says: In
3 accordance with Claim 34. So this is what's known as a
4 dependent claim.

5 In other words, to show that the Claim 34
6 matches between the requirements and the -- and the way
7 the Newegg system is built, you also have to show that
8 Claim 34 also matches, because Claim 35 really depends
9 upon Claim 34.

10 So, on the right side over here I have put
11 a -- I had this board constructed for us. And this is
12 Claim 34, all of these elements. And then down at the
13 bottom here we have Claim 35.

14 So Claim 35, in order to be -- to show that it
15 infringes, I have to first really do the analysis of
16 Claim 34. So the starting point here is Claim 34. When
17 I finish it, then we will return basically to Claim 35.

18 Q All right. The letters 34(a) and (b), (c),
19 (d), (e), et cetera, et cetera, were they in the
20 original claim, or did you add those on yourself just to
21 have a way to keep track of where you are?

22 A I added those. In fact, the convention here
23 is that the brackets are things that I've added. The
24 Number 34 starts out that's part of the claim, and the
25 (a) is what I added. Then I called 34(b) the second

1 one, and 34(c), and so on.

2 This is just a way of -- it's a notation for
3 me to keep track of which claim element that I'm working
4 on. And I did that the same for all of the -- for all
5 the claims.

6 Q All right. Let's start to step through it as
7 expediently as we are able to and be correct, Doctor.
8 Let's start with element 34(a). Is that the first
9 element that you considered?

10 A Yes. I started with -- I started at the top
11 basically and went in alphabetical order.

12 Q All right. Would you explain your analysis of
13 34(a), and we have -- I guess you have actually because
14 you're controlling the slides -- you've got a slide up,
15 '314 patent claim element 34. Is this the system that
16 you used in doing the analysis of these claims?

17 A Yes. This -- you can see that this claim
18 really just includes -- the evidence is just the upper
19 portion of this larger diagram that we spent some time
20 on this morning. So -- I mean earlier.

21 This particular diagram that I've shown here
22 is a -- it's kind of a simplified version of this one
23 that we have on the -- on the -- on the posters. Okay?

24 The two were on two different pages of the
25 same document that were produced by -- by Newegg. So

1 that's the reason they look -- they look so similar.

2 So this is a network-based sales system. I
3 mean, it has the network, the public internet. It has a
4 customer computer and server computers. And so that's
5 what we mean by network. And since it's oriented
6 towards sales, it's a sales system.

7 And this word comprising means that we need to
8 look at all the rest of the elements, (b), (c), (d),
9 (e), all the way down to the last one. And the network
10 sales system, comprising means that it includes those.

11 So there can be other things that the Newegg
12 system does; but in order to practice this Claim 34, it
13 has to do every one of these. It can't do just most of
14 them; it has to do every one of them.

15 Q All right. All the way down at the bottom of
16 the slide you have up on the presentation system at the
17 moment, which is your No. 34, there is a parenthetical.

18 And it says: Sources, Newegg documents
19 (P008P018), and then Wu 30(b)(6) TR11:7-20. What's all
20 that mean?

21 A You probably can't read that. I mean, I can't
22 even read it and I'm right next to it. But this across
23 the bottom -- I have done this routinely on all of the
24 slides that I've prepared here.

25 And this came from those other exhibits where

1 I have all the detailed information. This -- this is
2 the reference to the Newegg evidence. Okay?

3 In all cases, this is either testimony or
4 documents produced by Newegg about how their system
5 works. So this is how I know that and what I relied on
6 for the fact that the system works the way I'm
7 describing to you this afternoon.

8 Q This whole mechanism that you came up with
9 with the slides and breaking the claim elements down and
10 all, are the slides intended to be summaries of this
11 additional documentation, such as, the exhibits,
12 transcript pages, things of that nature?

13 A Yes, that is exactly right.

14 Q And when you prepared these slides, to the
15 best of your ability, I mean, did you accurately
16 summarize what's in the source material that you've
17 cited on them?

18 A Yes. That was the way that we decided what
19 should go on the slides was I looked at the evidence,
20 and people who were assisting me to make these -- looked
21 at the evidence, and we made sure that this was an
22 accurate summary.

23 Q I don't know if you have Exhibit 62(a) and (b)
24 available to you?

25 A I do.

1 Q Would you tell us what you understand those
2 exhibits to be?

3 A I had mentioned earlier that one of the most
4 important depositions was the chief technical person,
5 Mr. Wu, the corporate -- corporate spokesman for Newegg.

6 And Exhibit 62(a) is essentially all of his
7 testimony, or excerpts of his testimony, that he gave at
8 his deposition.

9 Q All right. Is that the testimony from
10 Mr. Wu's deposition that you relied on in doing your
11 analyses for the seven claims of the three patents?

12 A Yes, that is correct.

13 And Exhibit B that you asked me about, I took
14 his testimony, and essentially I matched it up with
15 the -- each claim term.

16 So for example, here is his testimony about
17 how the network sales system operates at Newegg and what
18 the structure is. And one of the diagrams he used in
19 his description is, in fact, the one that we have up
20 here. So this all essentially -- that's how I know how
21 to describe to the jury how the system operates is
22 because Mr. Wu told us in his deposition.

23 Q What did you conclude about whether Newegg
24 meets Element 34(a)?

25 A Based on the analysis I did, the Newegg sales

1 system, in fact, meets Element 34(a).

2 Q All right. We've put up your Slide 35. This
3 is headed Claim 35 elements shown in Newegg system.

4 What are you going to do with this document?

5 A This is -- this is just a way for me to sort
6 of -- and people on the jury to figure out where we are.

7 So every time I finish an analysis, I sort of
8 go back to this and put a check mark in so that you have
9 some notion of where we are in going through all of
10 these elements of 34 -- the elements of Claim 34. Then
11 we will do Claim 35.

12 Q Is the check mark supposed to symbolize that
13 we just did the analysis or is it supposed to symbolize
14 that your opinion is the element is there?

15 A No. The check mark is a symbol that, in fact,
16 the analysis shows that the Newegg system meets the
17 requirements of this particular claim limitation 34(a).

18 Q All right. Did you next analyze Elements
19 34(b) through (d)?

20 A Yes.

21 Next -- I did the next three together, (b),
22 (c), and (d) because they're very straightforward and
23 they're easy to -- easy to understand once you know how
24 the Newegg system works.

25 So 34(b) is a client computer, a buyer

1 computer it's called here, for operation by the user who
2 wants to buy products; and that is the customer
3 computer, which is part of the Newegg system.

4 Q So is that first piece, 34(b), in the Newegg
5 system, in your opinion?

6 A Yes. And that's, again, based on this same
7 diagram here. This is the customer computer located in
8 the upper left-hand corner; and this is part of the
9 Newegg system, the network sales system really
10 represented by this entire picture.

11 Q What about the next item in 34(c), the
12 shopping cart computer?

13 A 34(c) is the shopping cart computer as you
14 mentioned, is represented by this sequence of servers.
15 And so you might say, well, how do you know that? And
16 the answer is at bottom of the slide here, it's from
17 Mr. Wu's testimony.

18 So Mr. Wu described the operation of the SSL
19 computer as the -- performing the functions of the
20 shopping cart computer. And I used as the definition of
21 the shopping cart computer the Court's construction for
22 what the shopping cart computer was.

23 Q All right. 34(d) is a shopping cart database.
24 Did you find that in the Newegg system?

25 A Yes. We referred to this earlier, and, in

1 fact, it describes it as a shopping cart database. So
2 there was very little question as to what the shopping
3 cart database corresponded to in the Newegg system.
4 But that was confirmed by Mr. Wu in his testimony.

5 Q Did the structure that was labeled shopping
6 cart database on the big exhibit that you're using,
7 which apparently is our Exhibit 8, did it match the
8 Judge's definition, or the Court's definition, of what a
9 database had to be?

10 A Yes, it did.

11 Q Is the shopping cart database connected to the
12 shopping cart computer in the Newegg system as 34(d)
13 requires it to be?

14 A It definitely is.

15 Here's the -- these two elements, the shopping
16 cart computer and the shopping cart database, in this
17 diagram, they're connected by this arrow. And that
18 arrow is understood to be and described as a network
19 connection. So, in fact, the shopping cart computer, as
20 operation is described by Mr. Wu, and the shopping cart
21 database, are, in fact, connected to each other.

22 Q In analyzing 34(b) through (d), how did you
23 determine what meanings to give to the claim terms?

24 A As always, the case -- I mean, whether I
25 explicitly remember to say it or not, I always used the

1 Court's construction. And here are a few of the terms
2 that were important in the last couple of minutes of
3 analysis that provide the definitions that I used for
4 computer, shopping cart, shopping cart computer and,
5 shopping cart database.

6 Q To the best of your understanding, did these
7 come from the Markman construction that originated with
8 Judge Davis?

9 A Not to the best of my understanding; in fact,
10 they did come -- literally these were copied directly
11 from the Court's dictionary of the claim construction
12 order provided by Judge Davis.

13 Q Do you have a definition from the Court of the
14 term computer? Did the Court say anything about whether
15 or not the claim computer had to be just one physical
16 device?

17 A Well, I mean, the definition is here. It had
18 to be a functional unit to perform substantial
19 computation. And that, in fact, could be represented by
20 a single box, if you will, or a collection of boxes.

21 Each box may, in fact, contain multiple
22 processing units.

23 So all of those fulfill the definition of a
24 computer, based on the Court's construction.

25 Q Okay. There is reference to a database in the

1 shopping cart database definition. Do you see that?

2 A Yes.

3 Q Can you explain why, in your view, Newegg has
4 a database, according to the Court's construction?

5 A First of all, based on the -- well, I mean, it
6 says database on the diagram, but that's actually not
7 sufficient.

8 But when Mr. Wu was asked about this, what
9 does this functionality correspond to, he characterized
10 it in a way that met the definition, which is a
11 collection of logically related data stored together in
12 one or more computer files. And a person of ordinary
13 skill in the art would understand that that is right;
14 that's what a database is. And it meets the Court's
15 construction as described by Mr. Wu in his testimony.

16 Q As you understand the function of Newegg's
17 system that we're discussing here, if more than one
18 customer clicks checkout, is more than one customer's
19 selections then stored together in the shopping cart
20 database in the Newegg system?

21 A Yes. The way the operation of the database
22 was described is that all of the shopping carts -- when
23 checkout occurs, all the shopping carts that are
24 currently involved in checkout -- I mean, Newegg is very
25 successful. They have, you know, millions of customers.

1 So there's certainly tens or hundreds or
2 thousands checking out at any one time, more than
3 likely. And all of those shopping cart computers are,
4 in fact -- shopping carts are, in fact, stored in the
5 same shopping cart database, which is this collection
6 of -- collection of servers shown right here.

7 Q Are the shopping carts for the various
8 customers, in your view, logically related?

9 A Yes, they are. They're all shopping carts,
10 and they're all contained in the shopping cart database.

11 So they are logically related by virtue of
12 being in the same database.

13 Q Did the Court say anything about how long the
14 information has to be stored?

15 A No. For the '314 and the '492 patent, those
16 are system claims, and they don't -- they don't say
17 anything -- they just mean that the functionality to
18 store the data has to be present.

19 Q Did the Court say anything --

20 A There's no additional requirement for anything
21 else, including how long they are in the database.

22 Q All right. Did the Court say anything about
23 whether a database has to be backed up to satisfy the
24 definition of database?

25 A Well, I mean, most databases are backed up;

1 some of them aren't. But that's not a requirement of
2 the claim language.

3 As I stated earlier, this comprising word here
4 means that the Newegg system, or the accused system, has
5 to perform all of these actions and contain all of these
6 structures in this case. It can also do other things.

7 In the case of database, it could provide
8 backup; could not provide backup. But that's not
9 required by the claim.

10 Q All right. Have you completed your
11 explanation of your analysis of elements 34(b) through
12 (d), Dr. Grimes?

13 A Yes, I have.

14 So I went back to my favorite chart here, and
15 I added the check marks for these three, because the
16 Newegg system practices the requirements for these three
17 claims based on that -- claim elements based on the
18 evidence that we just looked at.

19 Q All right. Let's go to claim element 34(e).

20 What does that claim element require, as you
21 understand it?

22 A Well, this element requires that the buyer
23 computer and shopping cart computer, which we've already
24 looked at, be interconnected by a computer network.

25 Q In the Newegg system, are they?

1 A Yes, they are. This is represented by this
2 black line.

3 I've added the red line here, by the way.
4 That's not part of the Newegg document that was
5 produced. But I added the red line to show the
6 connection between the buyer computer and the shopping
7 cart computer. For example, when you're adding items to
8 the shopping cart, this is the path that the request
9 takes from the client computer to the shopping cart
10 computer; and also the response going back to the client
11 computer travels over the same network.

12 Q And the public internet that appears on this
13 slide that you have up on the display system at the
14 moment, is that an indication of the buyer computer and
15 the shopping cart computer being interconnected by a
16 computer network?

17 A Yes, it is. Precisely, that's what this black
18 line in the Newegg diagram represents; it represents
19 that connection, interconnection.

20 Q So what did you conclude about whether Newegg
21 meets element 34(a)?

22 A This one is pretty straightforward. Based on
23 the evidence that we just looked at, in fact, I gave
24 34(e) a check mark as being met by the Newegg system.

25 Q I want to turn now to elements 34(f), (g), and

1 (h), but focusing on (f) first.

2 And here I want to focus on the way that the
3 Newegg system, when used, adds items to the shopping
4 cart. So I want to focus you back on your actual
5 purchase examples, sir. Are you with me, Dr. Grimes?

6 A Yes.

7 Q Can you explain in a little more detail how
8 Newegg does that in the system?

9 A I described it in words before, but sometimes
10 it's nicer to have some diagrams and animations to show
11 this, because this is going to turn out to be an
12 important aspect of the -- of the case.

13 The buyer computer, or the client computer, is
14 executing the browser. The browser has your product
15 element that you're looking at, like your cable. And
16 then we have this button called add-to-cart.

17 So when you click the add-to-cart button,
18 let's suppose that this is the first product that you
19 have found on the website -- you're going to buy several
20 things, but this is the first one. So this is the first
21 time in this interaction that you clicked the
22 add-to-cart button.

23 What happens is, for all button clicks,
24 actually almost all button clicks, the browser sends a
25 message to the Newegg server system over this network

1 that we just looked at, and it sends the message to the
2 server.

3 Now, the server gets this request for service,
4 and the service is add-to-cart. So what the Newegg
5 server does is it adds this product to a cookie --
6 actually, the first time it happens it generates the
7 cookie because there wasn't a cookie before. So it adds
8 this product a cookie.

9 And then when it sends the page back saying
10 you just purchased this item, it also sends the cookie
11 back to the client's computer. The client's computer
12 automatically, whenever it sees the cookie, stores it in
13 the cookie file. So it stores this cookie.

14 Q Is the information about the product stored
15 after the buyer clicks add-to-cart?

16 A Yes.

17 Q Where?

18 A The information as to what the product is is
19 sent in the message to the server computer. The server
20 computer takes that information -- the product ID,
21 actually, the product number, and puts that in the
22 cookie, and then sends this cookie back to the server
23 computer -- back to the client computer to be stored.

24 Q Can the buyer add a second product?

25 A Yes. In my example, I wanted to buy some

1 software. So I clicked -- it was actually called the
2 download button, but the function was the same as if I
3 had purchased a different cable. It was -- I clicked
4 the add-to-cart button for the second time.

5 Q And what happened?

6 A Okay. A message was sent. Every time
7 messages are sent, all of the cookies from this server
8 that is being addressed are sent with the message.

9 Now, before there were cookies sent as well,
10 but they weren't important to us because this was --
11 there wasn't any shopping cart cookie, if you will.

12 So the second time, it takes all the cookies,
13 now which includes the shopping cart cookie, and sends
14 that to the server. The server gets this message -- the
15 action is to add an item to the shopping cart -- and it
16 has the cookie from before.

17 So it adds the second product information in
18 this cookie. It actually modifies the cookie to add the
19 second item. Then it sends the cookie, with the page
20 saying you just purchased this item, back to the client
21 computer.

22 And the client computer does the same thing.
23 It takes this cookie that it got, which now has two
24 products in it, and stores that in this cookie file.

25 Q Okay. What happens when the buyer is

1 satisfied with what they've selected and wants to check
2 out?

3 A Well, they are perhaps looking at their
4 shopping cart to see what it is they purchased. But the
5 important thing is that there is a checkout button. And
6 they click the checkout button when they are through
7 shopping and through putting items in their cart.

8 So they click the checkout button. When you
9 click this button, not surprisingly, another message is
10 sent along with all of the cookies, which includes the
11 shopping cart cookie, to the Newegg server. And the
12 Newegg server now, instead of having an add-to-cart
13 action, it wants to do a checkout action.

14 So the check-out action involves some
15 different things. In particular, it looks at this
16 cookie, gets the data out of it for what the products
17 are that correspond to items in the shopping cart, and
18 it stores those in this shopping cart database. And
19 then basically that concludes the checkout action that
20 the server takes.

21 Then it sends a message back with more cookies
22 and says, you know, proceeds with the next stage in the
23 checkout process.

24 But this is that same shopping cart database
25 that we looked at earlier on this diagram. This is the

1 shopping cart computer which is performing these
2 actions, these requests, add-to-cart as well as
3 checkout. And this is the shopping cart database, which
4 is where the product information is stored after the
5 checkout button has been clicked.

6 Q I think earlier, a few minutes ago, we
7 promised the jury a little more real-time demonstration
8 of how all this works.

9 Did you prepare or ask us to prepare an
10 animation along those lines?

11 A Yes. I asked that we make a short movie
12 that -- that describes how this system actually works.

13 Q All right. I think Mr. Gooden has now put up
14 on the monitor the beginning of the short movie. Would
15 you, working with Mr. Gooden, try and step us through
16 this, please, Dr. Grimes?

17 A Yes. It begins by looking at the web page
18 that has the cable on it. And so you're looking at this
19 web page, and then you decide that that's correct. And
20 so you find the cable that you want, and you go down
21 and, sure enough, there's an add-to-cart button under
22 it. We've seen this before.

23 You click on the button. The browser creates
24 a message. The message is add-to-cart item. It sends
25 the product information for the cable to the shopping

1 cart computer. The shopping cart computer then says,
2 okay, this is the first one, so I need to generate a
3 cookie with this shopping cart information in it for the
4 cable.

5 Then I'm going to send that back to the
6 customer computer, or the buyer computer, and that's
7 going to store it in this -- the cookie file. The idea
8 was to have a cookie jar there, which I thought was kind
9 of humorous.

10 So then we go and make the second purchase,
11 which is the software. I click on the download button,
12 which generates an add-to-cart message. And it sends --
13 now it sends this additional cookie that it has with the
14 first item in it to the shopping cart computer. The
15 shopping cart computer now takes the first cookie and
16 modifies it and makes the -- change it to have both
17 items in it, and sends it back to the customer's -- the
18 buyer computer, also the client -- same as the client
19 computer, and it stores it in the cookie file.

20 Okay. Now, when the shopping is concluded,
21 and you have this shopping cart page you're looking at
22 that has this button on it called checkout, you click
23 the checkout button. It, just like before, generates
24 another message to checkout, sends along all the cookies
25 that go to this server, which includes the cookie with

1 the shopping cart information in it.

2 That information goes to the server computer.

3 This time, though, the message is checkout, the action
4 to take place. So in this case, it takes the
5 information from the cookie and puts it in the shopping
6 cart in the shopping cart database.

7 So now we're ready to proceed with the next
8 stage of the checkout, which depends upon having the
9 information in the shopping cart database.

10 Q Did you confirm with any sort of Newegg
11 documentation or Mr. Wu's testimony that the Newegg
12 system actually works as you've testified and just shown
13 us with the animation as well as your Slide 42?

14 A Yes, I did. These animations, of course, were
15 done -- I had them done in preparation for the trial.
16 These are not Newegg movies. These are movies that I
17 had created.

18 Q Do you have a --

19 A But they are completely consistent with
20 Mr. Wu's testimony. That's the important thing is that
21 they are illustrative and demonstrative of how the
22 Newegg system works.

23 Q Do you have a copy of Exhibit 14 in your
24 binder, Dr. Grimes?

25 A Yes, I do.

1 Q Would you tell us what that is and what, if
2 anything, that's got to do with what we just spent the
3 last 15 or 20 minutes focusing on, this cookie,
4 add-to-cart, checkout, database, storage issue?

5 A This is a two-page diagram. It's entitled
6 Newegg Shopping Flow.

7 This is -- this is a page that we got from
8 Newegg that describes how the shopping flow works. And
9 this, in fact, is also -- I believe Mr. Wu was actually
10 asked about this diagram, and that's how we were able to
11 understand in great detail what all of the different
12 actions are taken by the Newegg system. So it works --
13 this is additional supporting evidence for it working
14 the way that I just described.

15 MR. ADAMO: Turn to Element 34(f) of
16 Claim 34 of the '314 patent, please.

17 Q (By Mr. Adamo) What does that claim element
18 require?

19 A This is a different kind of claim. This claim
20 is about how the buyer computer is programmed. So the
21 language starts out the buyer computer being programmed
22 to do several things.

23 First, it has to receive a plurality of
24 requests from a user. These requests from the user are
25 to add products to a shopping cart. And then the

1 request from the user and the products need to end up in
2 the shopping cart database.

3 So since this is a system claim, that means
4 that the Newegg system must contain the structures that
5 allow this to occur.

6 Q Does the Newegg system meet element 34(a) in
7 your opinion?

8 A Yes, it does. It, in fact, contains the
9 structures shown on this diagram and is consistent with
10 this diagram on the screen now, as well as Mr. Wu's
11 testimony of how the system works.

12 Q Can you show us --

13 MR. ADAMO: Just back up a second here.

14 Q (By Mr. Adamo) Can you show us again an
15 example of the add-to-cart button in the Newegg system?

16 I guess you've got one right here.

17 A Yes. This is the -- each time there is a
18 product on the web page that the user desires to
19 purchase, or download if it's -- if it's downloadable
20 software, there's a button that has this little icon
21 picture of a shopping cart on it. And when you click
22 that, that sends a message to the Newegg server system
23 to add this item to your shopping cart.

24 Q The add-to-cart button is on the Newegg web
25 page, apparently, but how is Newegg programming the

1 buyer computer?

2 A The Newegg programs the buyer computer because
3 when it sends -- the server computer sends the
4 information back to the buyer computer in a message,
5 that message contains programming. It's programmed in a
6 language called html. It stands for hypertext markup
7 language. And it's a language that the browser uses to
8 display the page and to program the actions of the
9 buttons, for example, the add-to-cart button.

10 So the programming of the buyer computer is
11 done by Newegg by virtue of sending this html code in a
12 message to the browser, and the browser executes that
13 code, generates the display, and provides the actions
14 available to the customer, for example, the add-to-cart
15 action.

16 Q Do you have on one of your slides, say Slide
17 44, some of this html code, Doctor?

18 A Yes, I do.

19 Q Would you show it to us, please?

20 A This is the code -- actually, the code for
21 this page displayed is probably 30 or 40 pages long. In
22 other words, that's one of the reasons these binders are
23 so thick is because I captured all of that code and
24 looked at it for this entire page.

25 But the important thing was now going to be:

1 What is the action that takes place that it's programmed
2 to do to generate the request?

3 Well, the requests are generated by virtue of
4 the user, the buyer clicking on the button. And the
5 computer has been programmed by Newegg, because this
6 example, the code that we see here, causes the action
7 when you click on the button.

8 In addition to providing the action, it also
9 does more code here that tells you what the display is
10 supposed to look like; in other words, what this little
11 button is supposed to look like. It's supposed to say
12 add-to-cart and have this icon and so on.

13 But the important thing is, is that not only
14 does the code describe how to display the button, but it
15 describes the action to be taken if the button is
16 clicked by the user. And that's how the user sends a
17 request.

18 It says: Program to receive a plurality of
19 requests from the user. These requests are generated by
20 clicking on add-to-cart button.

21 Q Are these -- in view of the explanation you
22 have just given us about the request to add products to
23 a shopping cart, are those requests, in your opinion,
24 Doctor, requests to add products to a shopping cart in
25 the shopping cart database?

1 A They are.

2 Q Why?

3 A Because the requests, as I just showed in the
4 animation and the description of how the system works,
5 the items that are added end up in the shopping cart
6 database. Therefore, the request from the user to add
7 the product ends up in the shopping cart database. And
8 that meets the requirement of this claim.

9 Q Does Element 34 specify in any way when or how
10 products are added to the database?

11 A It specifies the how because they are a result
12 of a request from the user to add products. But it
13 doesn't say anything about when. I mean, this is
14 characteristic of system claims. The system has to be
15 capable of making -- at some point, the request from the
16 user to add product must be represented in the shopping
17 cart database, which is the case --

18 Q And --

19 A -- as I described how that worked.

20 Q And in view of that description, because the
21 information of what was in the shopping cart eventually
22 ends up, or ultimately ends up in the shopping cart
23 database, in your opinion, is that enough to satisfy,
24 literally, element 34(f)?

25 A Well, that's what's required by a proper

1 reading of Claim 34(f). And the answer is yes, that's
2 the way the Newegg system operates.

3 Q In your opinion, then, does the Newegg system
4 literally meet element 34(f)?

5 A Yes, it does.

6 And back to my chart here, I gave 34(f) a
7 check mark.

8 Q All right.

9 With regard to element 34(g), what does that
10 element require?

11 A 34(g) is an additional thing that the buyer
12 computer must be programmed to do to meet this claim
13 element. And this one says, in response to these
14 requests to add the shopping cart messages to the
15 shopping cart computer, it's important that -- another
16 requirement is that each of these requests contains or
17 comprises, includes, a product identifier identifying
18 the plurality of products.

19 Now, I mentioned that when you click the
20 add-to-cart button, the message contains a product
21 identifier. This is the actual html code, and it's a
22 get request from the client to the web server.

23 And a get request gives the URL, and then
24 there's an item number here that's in bold -- I don't
25 know if you can read it or not. It says N82E1 and then

1 a bunch more digits. That is the product identifier for
2 the cable that I purchased.

3 Q Does the message then include a product
4 identifier for the product being added to the Newegg
5 shopping cart as element 34(g) requires?

6 A Yes, it does. This message goes -- when you
7 click the add-to-cart button, the message goes from the
8 client computer to the web server. And I have a
9 little -- cute little animation here that shows the
10 message going from the client to the shopping cart
11 computer labeled here as a web server.

12 Q For the reasons you've just described to us,
13 did the Newegg -- I'm sorry -- does Newegg program the
14 buyer computer to do this?

15 A Yes. By virtue of sending the html code to
16 the buyer computer, Newegg -- what it's doing is
17 controlling the buyer computer and what actions can be
18 taking place -- can take place on the buyer computer.

19 And so one of those actions is add-to-cart.
20 And so when the -- when that action is -- the request is
21 made by clicking the button, in fact, the shopping cart
22 computer, because of its programming, sends the message,
23 which includes the product identifier.

24 Q What do you conclude about element 34(g) as to
25 whether Newegg meets that, Doctor?

1 A Well, for all these reasons and the evidence
2 shown here and that I summarized, it meets 34(g).

3 Q All right. 34(h), what are the requirements
4 of element 34(h)?

5 A Okay. 34(h), we just talked about the
6 programming of the shopping -- of the client computer.

7 Now we are going to switch and talk about the
8 programming of the shopping cart computer. We just
9 talked about the client being programmed, and now we
10 have to show that the shopping cart computer is
11 programmed.

12 Q Is it?

13 A Yes, it is.

14 Q How?

15 A That's what the web server does; it receives
16 messages and takes actions. And computers just don't do
17 anything unless they are programmed to do them.
18 Otherwise, they just sit there and consume power.

19 In this case, the server computer, here called
20 the web server. In fact, its sole purpose in life is to
21 receive requests and to take action based on those. So,
22 in fact, it does receive this plurality or the several
23 shopping cart messages as required and takes action.

24 Q All right. Does 34(h), the element of the
25 claim that we're looking at, have any other

1 requirements?

2 A Yes, it does. There's basically two parts.

3 It has to be programmed to do two things.

4 Receiving the plurality of messages is -- is
5 really not in much dispute because that's what web
6 servers do.

7 The second part, though, is -- is more
8 problematic and is one of the issues in the suit, as we
9 heard this morning.

10 And here this shopping cart computer has to be
11 programmed to modify the shopping cart in the shopping
12 cart database, and the modification in the database has
13 to reflect these plurality of requests to add products
14 to the shopping cart.

15 Q All right. Is the Newegg shopping cart
16 computer programmed in that fashion?

17 A Yes, it does. It is programmed to do that.
18 It's shown in this diagram here, along with the
19 supporting testimony from Mr. Wu. And the Court's
20 construction about modify I wrote here because it's very
21 important to this, showing that the Newegg system meets
22 this claim element. Modify means to change an instance
23 of a shopping cart in a shopping cart database.

24 Q Let me -- let me ask you -- I think this is
25 essentially the same question, but let me phrase it in

1 slightly a different way.

2 Does the claim require the shopping cart
3 computer being programmed to modify the shopping cart in
4 the shopping cart database after each shopping cart
5 message?

6 A No. The claim, as we can see by reading the
7 text here, it says you have to modify the shopping cart
8 to reflect the plurality of requests. It doesn't say
9 follow one -- it doesn't say one at a time. It just
10 says that -- that the result has to be that the shopping
11 cart database reflects these results. And it has to
12 modify the shopping cart in the database to do that.
13 As you understand this claim and how -- at the moment,
14 focus on your understanding of the claim -- is it
15 correct that the modification could happen after each
16 individual message?

17 A Yes. That would be -- if it happened after
18 each individual message, that would also meet this
19 requirement, because the claim doesn't say whether it
20 has to be done one at a time or all at once. It simply
21 says that the shopping cart database has to be modified
22 to reflect this -- these three requests. You make three
23 requests for products, the shopping cart database has to
24 reflect that. It doesn't say one at a time or all at
25 once or some other way.

1 Q As you understand the claim element, it could
2 work either way; is that fair?

3 A Yes. In fact, in my experience in online
4 shopping, systems do work both ways. So the answer is
5 yes.

6 Q And which way does Newegg do it?

7 A Newegg does it all at once, as I described
8 earlier. They -- they wait until you do the checkout
9 operation. In other words, you can add-to-cart,
10 add-to-cart, add-to-cart, the information shows up in
11 the cookie. It's only when you do checkout that it's
12 stored in the shopping cart database.

13 Q All right. In earlier submissions in the case
14 which haven't been in front of the Court so far, but I'm
15 just going to say this, Newegg has said that, going from
16 an empty cart to a full cart is not a modification but
17 an insertion.

18 What's your reaction to that and your
19 response, Dr. Grimes?

20 A Well, I mean, you can -- you can characterize
21 it as an insertion, I suppose. But I'm not sure what
22 they mean by that.

23 The thing that I did was I went back to the
24 Court's construction, which is to change an instance of
25 a shopping cart in the shopping cart database. I mean,

1 the Court said this is what it means to modify it. So
2 that's -- that's the definition I used.

3 I don't know -- you could call it an
4 insertion, I suppose, if it, in fact, changes an
5 instance of a shopping cart in the shopping cart
6 database. Then it would match. But, otherwise, I am
7 not sure what they meant -- Newegg meant when they said,
8 no, no, it does an insertion in the file.

9 Q In your understanding, is going from zero
10 items to multiple items a change as the Court used that
11 phrase in the definition we're looking at on your
12 Slide 49?

13 A The answer is yes. And the reason is because
14 that's what Mr. Wu testified was the way that the
15 shopping cart database -- insertion, if you want to use
16 that word -- occurred.

17 In other words, there was an instance of a
18 shopping cart, and that instance was modified. And
19 that's the way the system works. And, therefore, based
20 on his description in his deposition, it meets the
21 modify requirement for the -- based on the Court's
22 construction.

23 THE COURT: Mr. Adamo, we've been going
24 for about two hours. Whenever you get to a good
25 stopping place, unless you're about to finish up with

1 this witness. How much longer do you anticipate?

2 MR. ADAMO: On this point, we're exactly
3 at the place we were going to talk about the Doctrine of
4 Equivalents. Maybe five more minutes --

5 THE COURT: Go ahead and finish that.

6 MR. ADAMO: -- and then this would be a
7 good place to break, if I can ask everybody to hang in
8 for five more.

9 THE COURT: As soon as you get to a
10 stopping place, we'll take a break.

11 MR. ADAMO: Absolutely, Your Honor.
12 Appreciate the courtesy.

13 Q (By Mr. Adamo) Dr. Grimes, I just promise
14 we're going to do this accurately but quickly.

15 A All right.

16 Q The slide says literal analysis -- this is
17 your Slide 49. Why are we specifying literal analysis
18 on this slide?

19 A Well, this is a -- it's to remind all of us,
20 and me in particular, that, in fact, I did another
21 analysis, which is the Doctrine of Equivalents.

22 So I just described to you my literal
23 analysis. This is the way I believe the claim should
24 operate, should mean, and this is the way the Newegg
25 system works, and it meets the literal description in

1 the claim.

2 Q Okay. Now, you did this alternative analysis
3 because you're not sure of your analysis, or you did it
4 just to see what would happen if you had bought into
5 Newegg's argument?

6 A No. I didn't do it because of any question of
7 my own analysis because of the reasons I said, the
8 testimony of Mr. Wu and so forth; but just sort of to
9 make sure, I did an analysis of this claim limitation
10 based on what Newegg interpreted it to mean. And I did
11 that analysis under the Doctrine of Equivalents.

12 Q And your understanding of what Newegg
13 interpreted this to mean was an addition every time
14 there's a message?

15 A Yes. They interpreted this language, which to
16 me it doesn't say that, but they said: When you reflect
17 the plurality -- let me see if I can restate the
18 language as they mean it.

19 They said, to reflect a plurality of requests
20 to add products to the shopping cart each time a request
21 is sent by the client. I have made this up. But they
22 think that this other language, each time a request is
23 made by the client is actually there.

24 And so I said, well, let's -- let's make the
25 assumption, under the Doctrine of Equivalents, that it

1 is there, and then do they still match this claim
2 requirement under the Doctrine of Equivalents. So
3 that's the analysis I did.

4 Q All right. Under what you understand to be
5 Newegg's belief position, whatever, do you believe that
6 Newegg meets the modify element under the Doctrine of
7 Equivalents?

8 A It does. I did the three-part analysis I
9 described before. I won't go back through all of that.
10 But the function performed, which is to modify, is the
11 same under the way Newegg thinks it should be
12 interpreted versus what I think is the correct literal
13 interpretation, the result is the same, I mean, you end
14 up with items stored in Newegg's shopping cart database.
15 The discrepancy is the way Newegg does it and the way
16 Newegg thinks it needs to be done, which is one at a
17 time.

18 So I looked at the way Newegg does it, which I
19 already described it adds items to the cookie, and then
20 at checkout it dumps all of the items into the shopping
21 cart, versus doing it every time you do an add-to-cart.
22 I actually prepared a little animation to show this
23 difference.

24 Q Okay. Another animation. A quick one, I
25 hope?

1 A A quick one.

2 Q All right.

3 A So the claim, according to Newegg, is that,
4 every time you click an add-to-cart button, they
5 maintain that that has to cause it to show up in the
6 shopping cart database. That's the essence of the way
7 they think that the claim should operate. And I said
8 all the systems do it that way, so that is a perfectly
9 reasonable -- if they did it that way, that would, in
10 fact, practice the claim element.

11 But the way they actually do it is different.
12 I did this before so you will recognize it. Every time
13 you add an item to the shopping cart, it actually gets
14 added to the cookie, which you can think of as like a
15 shopping basket or something. Then once you do the
16 checkout operation, not the add-to-cart but the checkout
17 operation, that causes all of the product identifiers in
18 the cookie to be put into the shopping cart database.

19 So the question is, okay, these two ways of
20 interpreting the claim are different, but are -- are the
21 differences between these two ways substantial? And, in
22 fact, I looked at them and they are not substantial.
23 The differences are insubstantial.

24 One of the reasons I came to that conclusion
25 is, these, in fact, are design alternatives. A designer

1 implementing a shopping cart and putting items from a
2 shopping cart into a database could do it either way.
3 In fact, systems do do it either way.

4 So these two, the differences between the way
5 Newegg does it, on the bottom, and the way they believe
6 that it is required to be done, on the top, are, in
7 fact, equivalent under the Doctrine of Equivalents.

8 Q And that's with respect specifically to
9 elements 34(h), correct?

10 A Yes. I can -- we're going to back up. Here
11 it is. This is 34(h). So this is the claim element
12 that I analyzed under the Doctrine of Equivalents.

13 Q All right. So what's the conclusion that you
14 reached, Dr. Grimes, as to whether Newegg meets element
15 34(h) under the Doctrine of Equivalents?

16 A It meets this under the Doctrine of
17 Equivalents, so I gave it a check mark.

18 Q Okay.

19 MR. ADAMO: This would be a good point,
20 Your Honor, with the Court's permission.

21 THE COURT: All right. Very well.

22 Ladies and Gentlemen of the Jury, we will be
23 in recess until 3:10. So enjoy your break. Remember my
24 instructions. Don't discuss the case among yourselves.

25 Be in recess.

1 (Jury out.)

2 (Recess.)

3 (Jury in.)

4 THE COURT: Please be seated.

5 You may proceed, Mr. Adamo.

6 MR. ADAMO: Thank you, Your Honor.

7 Thank you, Ms. Ferguson.

8 Q (By Mr. Adamo) All right. Dr. Grimes, let's
9 see if we can finish out. I think we were on -- I
10 should just check 34(h), I think that's where we stopped
11 before the break. Let's move on to element 34(i), and
12 let's see if we can pick up the pace a bit if you don't
13 mind, Doctor.

14 What does element 34(i) require?

15 A This is a third aspect of how the shopping
16 cart computer needs to be programmed. And this caused
17 the shopping cart message -- payment message to be
18 created.

19 Q What's a payment message?

20 A Well, the Court's construction is here.

21 Payment message is a message relating to the
22 payment for one or more products.

23 Q Does Newegg meet this element?

24 A Yes. This page shown here has the billing
25 information and the total, which is -- in fact, meets

1 the Court's construction.

2 Q And what is Newegg's payment message? Is it
3 this confirm order page?

4 A Yes, it's this confirm order page that's shown
5 here.

6 Q And why is that a payment message?

7 A Because it's a message because of the
8 information that's received from the server, that
9 relates to the payment for one or more products. And we
10 know that because we can see the information on the
11 page.

12 Q Is the shopping cart computer programmed to
13 cause this to be created?

14 A Yes. We know it is because we received this
15 web page from the shopping cart computer.

16 Q And does that then go back to your point
17 earlier about html code generating the page and that
18 being programming?

19 A Yes. That code is, in fact, generated by the
20 shopping cart computer sending a message to the client
21 and displayed.

22 Q What did you conclude about element 34(h) --
23 excuse me, 34(i) then?

24 A It's met by the evidence that we've summarized
25 here, and I gave it a check mark.

1 Q 34(j), what does element 34(j) require?

2 A 34(j) is a programming about the -- effected
3 on the buyer computer, and it has to be programmed to do
4 these two things, receive a request and to cause a
5 payment message to be activated to initiate the
6 transaction.

7 Q Is Newegg's buyer computer programmed to
8 perform the first task of element 34(j)?

9 A It is programmed to receive a request because
10 when you click on buttons, the submit-order button in
11 particular, that generates the request which is received
12 from the user.

13 Q All right. What about the second task? Is
14 the buyer computer programmed to cause said payment
15 message to be activated to initiate a payment
16 transaction for said plurality of products added to said
17 shopping cart?

18 A Yes. The Court's construction is listed here,
19 and when the submit-order button is clicked, that, in
20 fact, causes a payment message to be activated to
21 initiate the transaction.

22 Q And how is that done?

23 A The action is caused by the message that's
24 sent in response to clicking the submit-order button.
25 That's what causes the activation of the initiation of

1 the payment transaction.

2 Q And is the message that's sent to the Newegg
3 shopping cart computer, does that tell the computer that
4 the buyer made the requested purchase?

5 A Yes, it does. That's the action that's to be
6 taken place by the buyer -- by the server computer when
7 it receives this message. It initiates the transaction.

8 Q And is the sending of the message an action
9 associated with the payment message so the Court's
10 construction is satisfied?

11 A Yes, that is correct.

12 Q Is the payment transaction initiated?

13 A Precisely. The -- the clicking of this button
14 and the sending of the message to the server computer is
15 what initiates the transaction.

16 Q So the buyer computer does the recited actions
17 then?

18 A Yes. The buyer computer is programmed to
19 cause the message to be activated, and then that message
20 is received by the server computer.

21 Q And programmed how, again?

22 A Programmed using html that's been sent from
23 the server computer.

24 Q Do you have any further evidence that a
25 payment transaction was initiated, more than what we've

1 look at so far?

2 A Well, we can tell it's been initiated because,
3 in fact, we get a thank-you message from the website in
4 response to the server computer initiating payment
5 thanking -- thanking me for ordering it.

6 And further, sometime later, I get an e-mail.
7 This came to my e-mail for my purchases telling me that
8 my order was successfully charged. So I know that, in
9 fact, the payment transaction had to have been
10 initiated; otherwise, I wouldn't get this message.

11 Q Dr. Grimes, does Newegg meet claim element
12 34(j) then?

13 A Yes, it does for the reasons I summarized
14 here, so I gave it a check mark.

15 Q Let's move on to claim elements 34(k, (l), and
16 (m). Do these elements add new structures to the claim?

17 A No. These are really definitions. In fact,
18 they're definitions consistent with the Court's
19 construction. So these were the definitions I've
20 already used in the analysis that I performed thus far.

21 Q All right. Let's just step through them
22 briefly for completeness.

23 34(k), does the Newegg system have that claim
24 shopping cart?

25 A Yes, it does. It has this stored

1 representation of a collection of products.

2 Q 34(l), does the Newegg system have the claim
3 shopping cart database?

4 A Yes, it does. The Newegg database does meet
5 this claim element.

6 Q And 34(m), does the Newegg system have the
7 claim shopping cart computer?

8 A Yes. The shopping cart computer, as we've
9 talked about earlier, is the computer that modifies the
10 stored representations in the database.

11 Q And in the way you've discussed before the
12 break with respect to element 34(h), is the shopping
13 cart computer modified -- programmed to modify the
14 shopping cart and the database, et cetera, et cetera?

15 A Yes, it is. It uses this network connection
16 in this diagram -- this large diagram that I showed
17 earlier.

18 Q Does Newegg meet elements 34(k) through (m),
19 then, in your opinion?

20 A Yes, it does. And these are the three
21 remaining elements of 34, so I gave each of those a
22 check mark.

23 Q All right. We've been through elements (a)
24 through (m) of Claim 34. That's all of them?

25 A That is all of them.

1 Q All right. In your opinion, then, does the
2 newegg.com website meet all the elements of Claim 34?

3 A It does. It does.

4 Q Before we go to Claim 35, let me ask you about
5 the neweggmall.com. Does that meet all the elements of
6 Claim 34?

7 A It does. The transaction that I did verified
8 that the Newegg Mall also meets element -- all the
9 elements of Claim 34.

10 Q So if we went through all of the detail we
11 just went through with this Newegg website, we'd end up
12 with boxes checked for all of 34(a) through 34(m)?

13 A Yes, we would. The transactions operate
14 really substantially the same way on newegg.mall as they
15 do on newegg.com, based on Mr. Wu's description of
16 Newegg Mall.

17 Q So, literally, would all of elements 34(a)
18 through (m), in your opinion, be satisfied by
19 neweggmall.com?

20 A Yes, they would.

21 Q All right. Now, let's turn to Claim 35.

22 Please tell us what you understand Claim 35
23 requires.

24 A We saw this at the beginning of the '314.
25 This is the one that depends upon 34. So 35 then

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1 includes everything included in 34, and then adds some
2 additional limitations.

3 In this particular case, the shopping cart
4 computer I have to show is programmed to cause the
5 payment message to be created before the buyer computer
6 causes the payment message to be activated.

7 Q And why do you say that the payment message
8 was created before? What is it that you see that
9 evidences that?

10 A Well, the payment message is really the
11 message that creates this web page that's displayed to
12 the user that comes from the -- from the web server, the
13 shopping cart computer. And it contains this button.
14 And it's the button that activates the initiation of the
15 message.

16 So the payment message is created because we
17 can see it, and then the button is clicked. And so the
18 message is created before the payment message is
19 activated.

20 Q If it wasn't done in that sequence, would
21 there be a button to click?

22 A No, there would not be a button to click.
23 Just by nature of the way that the system operates, the
24 message occurs, then the button is there, and you click
25 on the button, and that activates the payment.

1 Q With regard to Claim 35, then, Dr. Grimes, is
2 it your view that Newegg meets that claim?

3 A Yes, it does. It is my opinion, so I gave 35
4 a check mark.

5 Q All right. Now, looking at Claim 35 as a
6 whole, what's your opinion?

7 A Well, Claim 35, which includes Claim 34, has
8 all the elements that we've just analyzed. And I
9 presented summaries of my detailed analysis so I gave 35
10 a check -- 35 is one of the claims in the suit.

11 Q And is it your view that Claim 35 is literally
12 infringed?

13 A Yes, it is literally infringed.

14 Q All right. Let's turn to Claim 51. What does
15 Claim 51 require, Doctor?

16 A 51 is a similar structure to 34 because it
17 also depends on 34. So all of the analysis that we just
18 completed for 34 applies also to 51.

19 So 51 adds an additional requirement where the
20 network that's in Claim 34 is an internet.

21 Q Can you explain -- oh, I see. So what you
22 called earlier is the cloud, the public internet, that
23 is the element that you say responds to Claim 51?

24 A Yes, that's correct.

25 Based on the system diagram that we have here,

1 you can see that the internet is the network that
2 connects the customer computer with the server
3 computers.

4 Q All right. And a number of the slides that
5 we've looked at have had the source information in the
6 lower right-hand corner that we discussed earlier. This
7 slide does. Same reason, the source information is
8 there for the same purpose, Doctor?

9 A Yes. That's the case for all of the slides
10 that I've summarized. I made sure that each one of them
11 has the source from my detailed analysis.

12 Q So what's your ultimate conclusion about Claim
13 51?

14 A Well, for -- because of the rationale for --
15 and the evidence for Claim 34, Claim -- and the way
16 Claim 51 is evidenced, then I gave 51 a check mark as
17 well.

18 Q Is Claim 51 literally infringed, in your
19 opinion, Dr. Grimes?

20 A Yes, it is.

21 Q All right. Why don't we now turn our
22 attention to the '492 patent.

23 And I think in your overall topics we are
24 right in the middle of the three patents. We have done
25 '314 patent; we are now at '492.

1 What relation, again, does the '492 patent
2 have to the '314 patent?

3 A The '492 patent, turns out, it also has a
4 claim that's very much like the '314 patent; but the
5 main feature of the '492 patent is that it adds a
6 different functionality, namely checking past
7 transactions.

8 Q All right. Let's -- excuse me just for one
9 moment.

10 Okay. Claim 15 of the '492 patent, that claim is
11 directed to what?

12 A Yes. Claim 17, which is -- which is -- let's
13 see, Claim 41, let me say --

14 Q Okay.

15 A -- is the one that's asserted in this matter,
16 the first one to be dealt with. And 41 depends upon --
17 depends upon Claim 15.

18 But I think there's another patent -- another
19 claim that we were going to deal with first.

20 Q Yeah.

21 A Claim 17, which is actually not listed here.

22 Q We don't have that one on the chart?

23 A That's a little bit confusing. I don't think
24 I have a chart with Claim 17 on it.

25 Q All right. Let's -- so we have to work

1 without the chart on Claim 17. But let's do Claim 17
2 first anyway.

3 Can you tell us what the differences are
4 between Claim 17 and Claim 34 of the '314 patent?

5 A Yes. This is relatively straightforward to
6 deal with because we just spent all this time on
7 Claim 34 of the '314. And it turns out that Claim 17 of
8 the '492 is almost identical. I mean, if you compare
9 the text side by side, which I have done, there's
10 actually very little difference. What the differences
11 are I've got on this slide and the next one.

12 Q All right. So this is your Slide 67. You've
13 got a first difference here that you identified between
14 Claim 17 of the '492 patent and Claim 34 of the '314
15 patent?

16 A That is correct.

17 Q All right. Could you briefly explain the
18 first difference?

19 A Well, the first difference is that the
20 computer network in the Claim 34 has an additional
21 requirement in that it has to be a public packet
22 switched computer network. So, it's more specific than
23 Claim 34.

24 Q Does Newegg's system use a public packet
25 switched computer network?

1 A It does indeed. The Court construed the term
2 packet switching in analyzing the -- because of the fact
3 that it uses the internet, it's really well-known that
4 the internet is, in fact, an example of a packet
5 switched system that meets the Court's definition. It's
6 a packet switched computer network.

7 Q How do you know the internet is a packet
8 switched network, Dr. Grimes?

9 A Well, not only did Mr. Wu confirm that, but
10 the other documents that I have listed here provide
11 additional confirmation. The RFC listed here and
12 Tanenbaum, which is a very well-known book on computer
13 networks.

14 Q And a packet switched network -- I think you
15 might have seen during my opening, I put a slide up
16 there quickly -- is a packet switched situation where
17 messages are split up into pieces, the packets are sent,
18 and then the packets can go in a variety of different
19 paths, but they eventually arrive at their destination,
20 and then they are reassembled?

21 A That's correct. The message is far too long
22 to be contained in a single packet, so it's broken up
23 into multiple packets. That's just the way the internet
24 works.

25 Q You made reference to something called RFC

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1 '791. Would you look at your binders and hopefully
2 you're going to find Exhibit 24, which should be that
3 internet protocol?

4 A Yes. This is a document from the Internet
5 Engineering Task Force, which is a group of -- loosely
6 coupled group of people who, in fact, worry about what
7 kind of standards should be used by the internet. And
8 this RFC is an example of one of the documents that
9 describes the IP or the internet protocol.

10 Q In your experience and in your view,
11 Dr. Grimes, is an RFC such as this a reliable reference
12 and, in fact, a reference that people in your line of
13 work and your experience rely upon with regard to the
14 internet protocol?

15 A It is. The Internet Engineering Task Force is
16 a group of people who are all cooperating. And so when
17 a document like this shows up, the other people say,
18 okay, well, this is the way we should do it. It doesn't
19 have force of standards body or something. But, in
20 fact, it works very well over many, many years as a way
21 to get uniformity in the operation of the internet.

22 Q And you also talked about Tanenbaum 3D edition
23 on Slide 67. What is that?

24 A Tanenbaum is probably one of the most
25 well-recognized computer science books that deals with

1 computer networks. And he has many editions going back
2 many years, and the 3d edition is an example.

3 Q Is Tanenbaum, to your understanding, a
4 reliable reference, essentially a standard reference in
5 the computer network field that people such as yourself
6 rely upon?

7 A Yes. Tanenbaum is what I would call an
8 authoritative source of information about all aspects of
9 computer networks.

10 Q All right. We've got on the system the front
11 page of Tanenbaum's book, part of which is in -- should
12 be in your binder as Exhibit 25. Would you find that
13 for us and confirm that Exhibit 25 is, in fact, part of
14 the Tanenbaum book?

15 A Yes, it is. I have provided specific
16 citations for that which are listed across the bottom of
17 the slide here to specific pages in this reference to
18 confirm that the internet uses this packet switched
19 protocol, the packet switched computer network.

20 Q All right. What about the other differences
21 you identified between Claim 34 of the '314 patent and
22 Claim 17 of the '492 patent?

23 A This difference relates to the messages that
24 are sent back and forth between the client and the
25 server and the server and the client. In this case, the

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1 shopping cart message, which goes from the client to the
2 server, has additional requirements. In particular, it
3 has to contain a universal resource locator or a URL.
4 And the payment message is another example of a message
5 that must contain a URL.

6 And here is the http traffic that I recorded
7 during my purchase example. And, in fact, it shows that
8 the http shopping cart message contains a URL and shows
9 that the payment message also contains a URL.

10 Q What conclusion did you reach then, Doctor,
11 with respect to Claim 17 of the '492 patent and whether
12 the Newegg system satisfies it?

13 A Because of these differences and additional
14 requirements are met, I concluded that Claim 17 is
15 practiced by the Newegg system.

16 Q Literally?

17 A Literally.

18 Q All right. Let's move on to other claims in
19 the '492 patent.

20 Does the '492 patent have other claims that,
21 in your opinion, are met by Newegg?

22 A Yes. This is the second, in some sense the
23 major feature of the '492, which is the hypertext
24 statement system.

25 Here we have Claim 15 and Claim 41 on the

1 board. And as we can see from the board and from the
2 slide, we first need to analyze Claim 15.

3 Q All right. Is that because Claim 41 is
4 dependent; it cites back to Claim 15?

5 A Yes, exactly. It's a dependent claim, and
6 it's dependent upon Claim 15. So we have to revisit
7 Claim 41 after we have looked at the evidence for
8 Claim 15.

9 Q All right. We've got your -- now we've got
10 your poster that matches the questions I should be
11 asking you. Got Claim 15, Claim 41, and hopefully it's
12 also going to work for Claim 61, which it looks like it
13 does.

14 Let's start with Claim 15, please. You used
15 the same system of breaking it down into subparts with
16 brackets to show what you did yourself?

17 A Yes, that's correct.

18 Q Let's turn to 15(a) first. What does that
19 element recite?

20 A This is a -- recites a hypertext statement
21 system comprising, which means it includes the items
22 listed below.

23 Q Does Newegg have a hypertext statement system?

24 A Yes, they do. They call it the order history
25 system, order history pages, but it is a hypertext

1 statement system.

2 Q Look now at elements 15(b) through 15(d).
3 What did your analysis of those elements show?

4 A These three elements, looking at (b) first,
5 requires a client computer, which is the same computer
6 we were used to pointing out in the upper left-hand
7 corner of the diagram. And it's for operation by a user
8 of the claim.

9 Q And what about element 15(c)?

10 A Element 15(c) is -- requires one or more
11 server computers for operation by server users. And
12 we've seen this before, as I circled it in red here with
13 the oval. Previously we called it the shopping cart
14 computer, and it also performs the hypertext statement
15 functions.

16 Q And now element 15(d), what did your analysis
17 show there?

18 A The client computer and the server computers
19 are interconnected. And we already dealt with this
20 question before. It's interconnected with a public
21 packet switched computer network, which is the internet.

22 Q What is your opinion, then, Dr. Grimes, as to
23 whether Newegg meets Claim elements 15(a) through (d)?

24 A Based on the evidence we've summarized here,
25 in fact, the Newegg system meets these four claim

1 elements listed here.

2 Q All right. Let's continue with your analysis
3 of Claim 15. Looks like we're up to element 15(e).
4 What did your analysis with respect to that element
5 show?

6 A This is a requirement for the programming of
7 the server computer, and it has to do a couple of
8 things. One of them is to record information pertaining
9 to the transactions in a database. And the database is
10 shown on the right here with the little yellow square,
11 and that's where the order information -- the order
12 history information for the transactions is stored.

13 Q Does the Newegg server computer record the
14 information, then, about the purchase transactions in
15 the database?

16 A Yes, it does. We can see this because the web
17 server column, if you will, is the transaction server
18 for hypertext statement documents. And the thing at the
19 bottom says send message. So the web server sends the
20 message, and it goes through the MSNQ server into the
21 data center and stored in the order database. So it
22 meets this claim element.

23 Q Is the little gold square in there in the
24 original document or is it there --

25 A No, I added that. That is to represent the

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1 order history and the result of the recording that
2 information in the order history database. That is the
3 database that is required.

4 Q All right. You've just explained how the data
5 is recorded. How is it programmed to do that, or at
6 what point is it programmed to do that?

7 A Yes. We know that it's programmed to do that
8 because of this diagram, number one; and, number two,
9 because when Mr. Wu was asked about where the
10 information is recorded, he said it's recorded in the
11 order database.

12 Q What's the second function that the server
13 computer must be programmed to do?

14 A Okay. The second thing is that the same
15 server computer must also be programmed to transmit a
16 statement document that contains the transaction records
17 to the client computer over the network.

18 Q Are new -- excuse me -- Newegg server
19 computers programmed in that way, Dr. Grimes?

20 A Yes, they are.

21 This is an example of the html code on the
22 client. And when you click the link that requests the
23 order history, shown here in the red, from the
24 newegg.com secure server, which is the server we've been
25 focusing on, the server says, okay. That means that it

1 received the request and is going to supply the
2 requested information.

3 Q And how does that -- how do you know that the
4 computer's -- excuse me, the server computer was
5 programmed in the required way then?

6 A Well, I mean, that's what server computers do.
7 They are all programmed -- the only thing the server
8 computer really does is it receives requests and takes
9 action based on those. And the way we know that it is
10 programmed to do this particular operation is because we
11 receive an order history page as a result of the
12 request.

13 Q What did you conclude about whether the Newegg
14 system meets element 15(e)?

15 A For the reasons I've stated here, and the
16 other reasons, including Mr. Wu's testimony, it meets
17 this element.

18 Q All right. Let's turn our attention to 15(f).
19 Would you please explain your analysis for
20 that claim element?

21 A This is a requirement on how the client
22 computer is programmed. And we know from earlier it's
23 programmed by sending an html code from the server to
24 the client. That program -- the client controls what
25 the client computer does.

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1 And it does these three things. It displays
2 the statement document, it's called an order history.
3 It receives a request from the client to display
4 details. That's done with a mouse click. And it causes
5 the transaction detail link corresponding to that
6 portion of the document to be activated when you click
7 on the request.

8 Q Does the statement document have invoice
9 number hypertext links in it?

10 A Yes. Here's the portion of the web page that
11 comes back when you -- when you do this. So we know
12 that the -- the request was successful.

13 This particular -- this represents multiple
14 purchases that I've made. One of them is this dash 5 --
15 ends in 560. It's underlined, so I know it's a link.

16 Q Okay. And the element also requires that the
17 client computer is programmed to cause a transaction
18 detail hypertext link corresponding to part of the
19 statement document to be activated, right?

20 A Yes.

21 Q I did --

22 A And clicking on this link not only sends the
23 request but causes the detailed document to be
24 activated.

25 Q And you know that how?

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1 A Well, I know that because when I click on it,
2 I end up seeing the detail document.

3 Q What did you conclude about whether the Newegg
4 system meets element 15(f)?

5 A The Newegg system does, in fact, practice
6 element 15(f).

7 Q Let's turn to element 15(g), please.

8 What does your analysis of the newegg.com
9 system show with respect to this element of the '492
10 patent?

11 A Okay. Well, this is the other side of the
12 request. In other words, we just talked about the buyer
13 computer clicking the link, sends the request. This
14 says that the server computer needs to be programmed to
15 respond to the activation of the link. And it responds
16 by transmitting the details to the client computer over
17 the network as a detail document.

18 Q Does the Newegg system meet this element?

19 A It does. And here is the document that
20 actually shows up on the client computer. So the only
21 place it can come from is from the -- from the server
22 computer based on the request for this document.
23 And here it is. And it, in fact, shows the detail for
24 this particular invoice. In fact, this is the software.
25 So this is not the cable, but this is the software that

1 I ordered. So this is the details behind that link that
2 I clicked on.

3 Q And this is your Slide 77 that you're
4 describing?

5 A Yes, that's correct.

6 Q Does that conclude your explanation of how
7 element 15(g) is met?

8 A Yes. 15(g) is the last element of 15 that we
9 needed to analyze before dealing with 41. And so all
10 the elements of 15 have been met, so I gave them all the
11 check marks all at once.

12 Q In your view, Doctor, were they all met
13 literally by the Newegg system?

14 A Yes, they were. They are all met literally by
15 the Newegg system.

16 Q Okay. Let us then look at Claim 41. We
17 already looked at 15, which 41 is dependent from, and
18 you have concluded that 15 is literally infringed?

19 A Yes.

20 Q All right. Now, let's turn to 41. What did
21 your analysis of Claim 41 show?

22 A Well, this is an additional requirement in
23 addition to all the requirements of Claim 15. And this
24 requirement is -- is that at least one of the server
25 computers in the client -- one of the server computers

1 to the client computer in response to a statement URL
2 sent by the client computer to one of the server
3 computers.

4 So we need to look at the -- at the
5 information, the message that came from the client
6 computer and determine whether or not it contained this
7 statement URL.

8 Q Does Newegg meet this claim element -- I'm
9 sorry, this claim, excuse me?

10 A It does. This claim is -- by clicking the
11 order history, sends this following request. And the
12 request, in fact, includes the URL as required by this
13 claim. And it meets the Court's construction, as I
14 showed at the bottom here.

15 Q All right. What was the definition you
16 applied in that analysis for a statement URL?

17 A The statement URL, which is the claim term,
18 the Court said is a URL that concerns a statement. And
19 this concerns the order history, which is, in fact, a
20 statement.

21 Q Does that satisfy the Court's definition, sir?

22 A It does.

23 Q All right. Does the newegg.com system meet
24 the additional element of Claim 41 as to Claim 15?

25 A It does. So I gave Claim 41 a check mark.

1 Q Is it your belief and conclusion and opinion,
2 Doctor, that Claim 41 is literally infringed by the
3 newegg.com system?

4 A Not only Claim 17, but Claim 41, are literally
5 infringed.

6 Q Before we turn to Claim 61, did you do an
7 analysis of Claim 15 and Claim 41 for the Newegg Mall
8 that we were discussing earlier?

9 A Yes, I did. Claim 15, Claim -- and Claim 41
10 were met by the Newegg Mall as I detailed in one of the
11 appendices that we looked at earlier.

12 Q Was that also literal, in your view?

13 A Yes, it was literally infringed.

14 Q Let's turn to Claim 61 now, the last claim of
15 the '492 patent that we're going to look at. That's at
16 the bottom of your chart. Is that a dependent or
17 independent claim?

18 A It's dependent. But instead of being
19 dependent on 15, it's dependent on 60, which is
20 dependent on 15. So there's another link in the chain
21 here.

22 Q Okay. So 61 depends on 60; 60 depends back to
23 15?

24 A Correct.

25 Q What does Claim 65 require then?

1 A Before we look at 61, we have to look at 60.
2 And 60 requires a statement system according to
3 Claim 15, but the statement system needs to include
4 information on the transactions by the user that took
5 place during a given month. So this is an additional
6 restriction on Claim 15.

7 Q What's your conclusion after analysis
8 regarding Claim 60?

9 A Well, we can see from the exhibit here, which
10 was the order history document that I received and
11 looked at on my computer, that, in fact, it allows you
12 to set one month and it will provide you with the
13 details about the transaction for that month.

14 Notice I have at the top new version only.

15 Q Yes.

16 A In looking at the -- I did three different
17 transactions -- or looked at three different
18 transactions; two of them I did.

19 The earlier one, which was done in 2008, did
20 not have this capability. So this capability represents
21 something that Newegg added to their system sometime
22 between the middle of 2008 and the middle of 2009 when
23 these two transactions were done. So this is relatively
24 recent.

25 The rest of everything I've talked about goes

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1 all the way back to 2001. This is the first example we
2 have of a claim that doesn't go all the way back to
3 2001.

4 This claim has really only been infringed
5 since, for sure that we know, since sometime in 2009.
6 So, it's relatively recent.

7 Q Up to this particular point, the limitation
8 that appears, the dependent limitation that added to
9 Claim 15, everything you've been testifying about
10 earlier must apply equally to what you're calling both
11 versions?

12 A Yes, that's correct.

13 Q Okay. Does that complete your analysis of
14 Claim 60?

15 A Yes, it does. And now we can move to 61,
16 which is dependent on 60, which was dependent on 15.

17 Q All right. To meet claim -- first, what does
18 Claim 61 require?

19 A 61 requires further information on the
20 transactions by the user in a hypertext statement
21 system. In fact, it requires four items, but really
22 only needs to include one of them, so date of
23 transaction, product ID, payment amount, merchant
24 identifier.

25 So we look at the order history information

1 and we say: Does this include at least one of these
2 four elements? And the answer is yes, because it
3 includes two of the four elements. It includes the date
4 and the payment amount.

5 Q All right. I just want to clarify; you might
6 have misspoke yourself.

7 Does Claim 61 require all four of -- the date
8 of transaction and identification of the product,
9 payment method, and a merchant identifier, or just any
10 one or more of the four?

11 A All you have to do, if you match this claim
12 requirement, is just one of these four.

13 Q All right. Now --

14 A There's two of them, which is, of course, at
15 least one.

16 Q Agreed.

17 We're looking at your Slide 84. You've got
18 new version only on this slide as well. Why?

19 A Well, 61 is dependent upon 60, and 60 is only
20 the new version. So, therefore, Claim 61 also is
21 restricted to just the new version because of Claim 60.

22 Q Does that finish your analysis with regard to
23 Claim 61?

24 A It does. And this time I gave it a qualified
25 check mark. I said 61 is met only by the new system.

1 And by new system I mean since sometime in 2009.

2 Q And in your view, is the infringement by the
3 new system only of Claim 61, literal?

4 A Yes, it is.

5 Q All right. Doctor, that's all that we needed
6 to address on the '492 patent. But before we turn to
7 the remaining patent, the '639 patent, I want to ask you
8 a few more questions about the system claims, the ones
9 we've been discussing in the '314 patent and '492
10 patents.

11 Now, I hopefully was careful to ask you in
12 each instance about your ultimate opinion and
13 conclusion.

14 Am I correct that you testified that, and
15 explained how the Newegg system met all of the elements
16 of the claims that we've reviewed so far out of the '314
17 and the '492 patents?

18 A Yes, that's correct. The Newegg system is
19 this large diagram beside me here.

20 Q Okay. Who uses the Newegg system?

21 A Well, in the first instance, Newegg, the
22 company, uses the entire system. In other words,
23 everything on this diagram here is used. And used means
24 essentially the operation of it is controlled by Newegg.
25 That includes the servers, databases, the network links,

1 the buyer computers as well.

2 Q And this is your Slide 86 where you have
3 summarized your views on this subject, sir?

4 A That is correct.

5 Q Now, you say that Newegg also uses the buyer
6 or client computer as part of the system, I see.

7 A Yes, that is correct.

8 Q All right. How do you reach that conclusion?
9 I mean, whoever is sitting in their home is the one
10 who's punching the buttons on their client computer;
11 isn't it?

12 A That's also true. In other words, the client
13 computer is used both by Newegg and by, you know, you or
14 I if we're buying products.

15 Q All right. Let's stick to the use by Newegg
16 before we talk about the customer use.

17 Why do you say that Newegg is using the buyer
18 or client computers?

19 A Well, Newegg -- Newegg uses the client
20 computer because it controls the client computer. In
21 other words, if a person is buying products and paying
22 for them on the Newegg website, all of the operations or
23 all of the options that are available to the user on the
24 client computer are controlled by Newegg.

25 And it's controlled because Newegg sends the

1 programming that the browser uses to display the pages,
2 and the pages contain buttons that Newegg puts on the
3 page, and those are the only options that the user has
4 for what kind of operations to do on the Newegg website.

5 Q Now, you note here on your Slide 86 under
6 buyer -- Newegg uses buyer computers client computers,
7 you note providing cookies and storing shopping cart and
8 other information and cookies on those computers. Then
9 you've got a sub-note: Newegg requires customers to
10 have cookies enabled.

11 Can you explain all that to us a little more,
12 please, Dr. Grimes --

13 A Yes.

14 Q -- why that supports your view that Newegg
15 uses the claim systems that you've been discussing?

16 A Certainly.

17 If -- if you go to buy something on the Newegg
18 website, and you put items in the shopping cart, and you
19 click checkout, if for some reason cookies are not
20 enabled in your browser, the system will give you an
21 error message basically. It says, I'm sorry, but you
22 have to enable cookies on your browser if you're
23 actually going to purchase these products.

24 The same thing happens if you try and log in
25 and you don't have cookies enabled. The system -- the

1 Newegg system does not allow you to actually purchase
2 anything, or log in for that matter to check your
3 statement document, unless you have cookies enabled.

4 So there's no option for the user here. The
5 user has to have cookies enabled or they simply can't
6 purchase things on the website. So in that sense, the
7 client computer operates automatically once the user
8 enables cookies.

9 So there isn't any election or option
10 available to the user. The user gets a web page to be
11 displayed; and if cookies are enabled, then when these
12 web pages come from the server computer, the browser
13 automatically stores the cookies and Newegg realizes
14 that because you can't buy things without having cookies
15 enabled.

16 So this is the automatic operation of the
17 user. There is no option for the user. They have to
18 enable cookies or they simply can't buy products.

19 Q As best as you can tell from your review of
20 all of this Newegg system information, was this some
21 accident or was the system designed to operate exactly
22 the way you just described it?

23 A No, it must operate the way I was describing.
24 In fact, that's conventional in many websites on the
25 internet. And when you first install a browser, in

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1 fact, that's the default, that cookies are enabled. So,
2 many times the users install a browser, they go to
3 newegg.com, and they don't even realize this is an issue
4 because, in fact, cookies are enabled.

5 Newegg's website was designed specifically to
6 operate only with cookies enabled if you wanted to
7 purchase products. You can shop, you know, but you
8 can't buy anything.

9 Q All right. You don't get \$2 billion from
10 transactions if people shop and don't buy, right?

11 A Yes, that's correct. That's correct.

12 Q Let me just make sure that -- because you've
13 used some terms here several times now and we didn't
14 cover them in your tutorial. And I want to make sure
15 that you explain the terms to the jury, because computer
16 people don't speak English.

17 And cookies enabled, in plain English does
18 that mean they're turned on?

19 A Yes. That means they're turned on. If you go
20 into the preferences capability of the browser and
21 search around, probably listed under cookies, you have
22 the ability to turn them off. And if you do that, you
23 can't buy products on the Newegg website.

24 Q You said something about cookies enabled being
25 a default condition, am I remembering what you said

1 correctly?

2 A Yes. When you first install browsers, that's
3 the default. In other words, the user doesn't actually
4 have to do anything. That's sort of the way they
5 operate, sort of out-of-the-box, if you will.

6 Q So when you say default, let me see if I can
7 get that back in English. Enable means turned on,
8 right?

9 A Turned on.

10 Q And default means it comes on and stays on
11 unless you do something to shut it off?

12 A That is correct, yes.

13 Q Okay.

14 All right. Would you look at Exhibit 15 in
15 your binder, please?

16 A Yes.

17 Q What is that?

18 A This is the help page from the Newegg website,
19 and it is very well done actually. It's four pages
20 long. It basically provides help for people that are
21 having difficulty or have some questions about some
22 things, or maybe they're having trouble logging in or
23 whatever. So this is a help page that is organized in
24 several categories. It talks about ordering products
25 and so on.

1 Q Is there a discussion about cookies in that
2 help page somewhere?

3 A Yes, there is.

4 Q Where is it approximately, so Mr. Gooden can
5 blow it up so the ladies and gentlemen of the jury can
6 see it.

7 A I'm looking for the -- yeah, here it is. It's
8 on -- it says: I am experiencing trouble with my
9 shopping cart. What can I do?

10 So this person has tried to check out, and it
11 didn't allow them to check out. So they're having
12 trouble with their shopping cart.

13 And it says here: Usually occur for one or
14 more of the following reasons:

15 Number one, cookies are not enabled, and then
16 it gives another reason, too, or your browser is
17 configured to block cookies from newegg.com.

18 So for whatever reason, cookies are not
19 automatically stored when they come back from the
20 server. Either they're not enabled, or for some reason,
21 the website is blocked.

22 Q So either they're not turned on or the client
23 computer, the people who are sitting in their homes, are
24 keeping other computers from shoving cookies into their
25 computer by blocking it, correct?

1 A Yes. Some browsers have the capability,
2 according to this, to block specific websites. I don't
3 know why you would block a website you're trying to buy
4 products at, but that's the second reason.

5 Typically, the reason is the first one, the
6 cookies are not enabled. So some -- you know, maybe
7 your son or daughter has come in and, you know, changed
8 the preferences or something to block cookies.

9 Q Is there an analogy of any sort that you feel
10 is appropriate, Dr. Grimes, that would describe Newegg's
11 use of its customer computers?

12 A Yes. The key is, is that Newegg controls the
13 operation of the client computer when it's connected to
14 the Newegg website.

15 Example of that might be maybe the mother is
16 preparing dinner or the father is preparing dinner, and
17 the daughter comes up and says, can I go out and play,
18 11-year-old daughter, and the parent says, You can clean
19 your room, or you can do your homework.

20 In other words, there's only two options
21 available for the daughter. Playing is not one of them.

22 So this is -- this is the same kind of analogy
23 for the way Newegg controls the operation of the client
24 computer. The client may want to do something, but the
25 only thing that they can do are the options that are

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1 available based on the html that programs the browser.

2 Q Would it be appropriate, in your view, to say
3 that Newegg is acting like a puppeteer?

4 A Puppeteer. I haven't -- I haven't thought
5 about that. They are in the sense that they're
6 controlling the available options on the client
7 computer. So in that sense, it's like a puppeteer, yes.

8 Q All right. And Newegg uses the entire system
9 for what purpose, Dr. Grimes?

10 A Well, the purpose is to -- you know, to make
11 money. I mean, that's why really any company is
12 probably in business. And they use the computer system
13 to that end. I mean, they may have other purposes, but
14 that's the one that comes to mind.

15 Q All right. You mentioned a few minutes ago
16 that Newegg's customers also use the system. Does
17 Newegg instruct the customers how to use the website and
18 the system?

19 A It does through the help menu that I just
20 described.

21 And in addition, the technical officer,
22 Mr. Wu, said that yes, cookies are required in order to
23 shop. That's the help page I mentioned.

24 If you try and log in and cookies aren't
25 enabled, the log-in page itself tells you, you know, you

1 have to enable cookies in order to log in.

2 So if you -- if you use the website at all and
3 cookies aren't enabled, there's all kinds of messages
4 that tell you that that's likely the problem.

5 Q Would you look at Exhibit 18 in your binder,
6 please?

7 A Yes. This is a corporate summary from the
8 website.

9 Q All right. In the second -- please look at
10 the portion where there's a discussion of -- about
11 newegg.com.

12 Do you see that?

13 A Yes. Near the bottom?

14 Q Yes.

15 And the first line, let me read it out loud.

16 Quote, Newegg.com, Inc., is the second largest
17 online-only retailer in the United States, period, close
18 quote.

19 Do you see that?

20 A Yes.

21 Q You understand what that means?

22 A Yes. That means that there is no physical
23 Newegg store. It means that the only way to buy
24 products from Newegg is to type in, you know, or
25 otherwise go to newegg.com or one of their other

1 websites and navigate the site and so forth, like I did
2 in my purchase example. You can't go to a physical
3 store and buy products.

4 Q Dr. Grimes, in your opinion, in view of
5 everything that you've seen with regard to the Newegg
6 systems, does Newegg encourage, coax, lead its customers
7 to use Newegg's sales and hypertext statement systems?

8 A It certainly does. When you go to the home
9 page, for example, it tells you what the specials are.
10 I mean, it advertises on the website to say, you know,
11 this is -- these are the specials that we're running.
12 I mean, they have good prices everywhere, but the
13 specials are things that -- products that they're
14 featuring.

15 Q Would you agree, sir, that Newegg needs
16 customers to use its website because that's the only
17 kind of business it's able to do?

18 A Well, not having any physical stores, I mean,
19 if you're a merchant, then you have to have a mechanism
20 to sell products, and the newegg.com website is the main
21 mechanism that they use to sell products.

22 Q Let's turn to the '639 -- thank you, Doctor.
23 Let's turn to the '639 patent now and see if
24 we can keep up the focus here.

25 The '639 patent, again, just so we've got it,

1 because we've been talking about a bunch of other
2 things. Very briefly, what does the '639 patent relate
3 to, as you understand it?

4 A This is this -- has been described earlier as
5 the session ID patent. And we'll be looking at -- at
6 some claims, so if I could have the board changed to the
7 next -- the next one.

8 The -- basically, the '639 patent provides the
9 underlying technology to manage sessions using this
10 technique called -- the invention called a session ID or
11 session identifier.

12 Q All right. The session identifier that you
13 just mentioned, did you give a particular meaning to
14 session in the context of the '639 patent?

15 A Well, the cart construed it, and it's at the
16 bottom of the slide here. It identified -- it construed
17 both session and session identifier.

18 A session is a series of requests and
19 responses to perform a complete task or a set of tasks
20 between a client and a server system. We've seen client
21 computers and server computers. Those make up a client
22 and server system.

23 And then a session identifier is a string of
24 characters, a text string, that identifies a particular
25 session.

1 Q Does Newegg have a session identifier using
2 the definitions that His Honor gave?

3 A It does. It actually has two different
4 sessions: A checkout session and a log-in session.

5 Q Can you explain the first session, please?

6 A Well, sessions -- sessions have to have a
7 beginning and an end, and there has to be one or more
8 tasks associated with that. And then there has to be a
9 session ID that corresponds to that session.

10 In the case of the Newegg system, the checkout
11 session is initiated by clicking on the checkout button,
12 and it ends when you click the submit order button.

13 The task, as you would expect, is paying for
14 the products in the shopping cart. And the SID is a
15 particular cookie. It's the value associated with the
16 shopping cart ID cookie that's stored on the client
17 browser and is updated by the server.

18 Q Okay. So what is the session -- excuse me.
19 What is the Newegg session identifier for the checkout
20 session then?

21 A It's the cookie called shopping cart ID, and
22 the identifier is the value contained in that cookie,
23 and it's showing here in red.

24 This box, by the way, is a fragment of the
25 message sent back by the server to the client and

1 instructs the client to set this cookie, and it gives it
2 the name and the value for the cookie.

3 Q Now, on this slide that's here, No. 90, you've
4 got some dates and use information. What are those
5 dates, and why did you put that information on this
6 slide?

7 A I could not confirm that the shopping cart
8 ID -- how far back it went. So I was able to confirm
9 that it was used between August 10, 2007, and at least
10 as late as October 29, 2008.

11 And I confirmed that because I had a colleague
12 of mine look at the code and also -- because it says at
13 the bottom here -- it's in response to an interrogatory,
14 which is a correspondence that came from Newegg, and
15 according to Mr. Wu's testimony.

16 Q What's the second session that you mentioned a
17 minute or two ago? What is that session? When does it
18 begin, and when does it end?

19 A This I call the log-in session, because it
20 corresponds to logging in to use facilities in the
21 computer. It has a beginning and an end, logging in and
22 logging out.

23 The task is -- could be several things. The
24 Court didn't say what the task needed to be, just there
25 needed to be one or a set of tasks, one task or a set of

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1 tasks.

2 And so it depends what the user does. For
3 example, if he logs on for the purpose of checking the
4 order history, then checking the order history turns out
5 to be a task.

6 There's a different cookie, the customer
7 log-in cookie, which stores the information -- stores
8 the session ID for the log-in session.

9 Q And is some of the http traffic shown on your
10 Slide 91, the one that's on the system now?

11 A Yes. It's been used at least as early -- as
12 far back as August of 2007, and it's currently being
13 used today.

14 Q And does the slide show some of the http
15 traffic?

16 A Yes. This is the http message that comes back
17 to the client to set this cookie up. And in this
18 particular -- it's like the previous one, but this time
19 it sets a different cookie, and it sets this value,
20 this -- it's written in red here. And that is the text
21 string that corresponds to the value of the session ID.

22 Q All right. Let's turn to the claims, if we
23 can, starting with Claim 60.

24 It looks as if we've got a dependent situation
25 here again, Dr. Grimes; is that correct?

1 A Yes. This -- we need to go through Claim 1
2 first and then return to Claim 60.

3 Q Okay. Let's start with Claim 1.

4 Is Claim 1 a system claim or a method claim?

5 A This is a method claim. So it means that we
6 have to show that the -- the Newegg system actually does
7 what the method says.

8 Q And how did you begin your analysis of
9 Claim 1?

10 A Well, I looked at the structure and looked at
11 the definition for the terms, and it needs to show that
12 Newegg has a method for processing these requests over a
13 network, and then the method actually has several steps.
14 But the -- based on the documents that I've seen and the
15 purchase example exhibits, Newegg does, in fact, process
16 these service requests through a server system. So they
17 meet this claim element.

18 Q So what is it that does the processing?

19 A The processing is done by the Newegg system,
20 and the service requests come from the client to the
21 server through the network.

22 Q The preamble that we're looking at, 1(a), uses
23 the term service request. Did the Court define that
24 term, and is that the definition that you used?

25 A Both of those are true. Service request is

1 listed at the bottom. And as is always the case, I used
2 the Court's construction for the term.

3 Q When we were looking earlier at the '314 and
4 the '492 patents, the term request was involved with
5 those patents.

6 Does the term service request, with regard to
7 the '639 patent, have the same meaning as the word
8 request did when we looked at them earlier -- looked at
9 it earlier in the '314 and the '492 patents?

10 A They use similar words, but, in fact, they
11 have quite different meanings.

12 The -- in the -- in the '314 and the '492
13 patent, the request was a result of clicking a button,
14 for example. Add-to-cart is an example of a request.
15 So the button click generated the request.

16 Here a service request is an http message --
17 http message that occurs under the covers, so to speak.
18 It goes between the client and the server.

19 So a service request is this collection of
20 messages from the client through a server to a
21 accomplish some task. And a service request is the
22 request part of that.

23 Q What did you conclude about element 1(a) in
24 your analysis?

25 A Element 1(a) is practiced by the Newegg

1 system.

2 Q All right. Element 1(b), what does element
3 1(b) require?

4 A Element 1(b) requires forwarding -- forwarding
5 a service request from the client to the server, and the
6 communications between the two need to correspond to the
7 hypertext transfer protocol, which is http.

8 Q In Newegg's system, is a server request, in
9 fact, forwarded from the client to the Newegg server
10 system?

11 A Yes, it is. The service request is forwarded.
12 For example, on the way, it's forwarded from the
13 netscaler block that we looked at earlier to the SSL
14 server block. And, in fact, the Newegg technical expert
15 said that the step, in fact, was performed by the server
16 system.

17 Q Who actually does the forwarding step?

18 A The forwarding step is done by each of the
19 elements along the way. In other words, it goes from
20 the customer to the firewall. It's forwarded by the
21 firewall to the netscaler. It's forwarded by the
22 netscaler to the SSL system. So it's forwarded really
23 many times.

24 Q Are the communications between the client and
25 the server system, as you analyzed it, according to the

1 hypertext transfer protocol?

2 A Yes, it is. In fact, it says in this line
3 right here, between the customer computer and the public
4 internet, it identifies http as the protocol. There's
5 actually a slight variation of it called https, which is
6 also an http protocol.

7 Q What did you conclude about element 1(b)?

8 A Element 1(b) is met by the Newegg system.

9 Q And who meets it?

10 A The server system -- well, the Newegg system
11 as a whole meets this claim element.

12 Q Go to 1(c). What does step 1(c) require?

13 A 1(c) requires a returning of the session ID
14 from the server to the client, and then the client
15 stores the session ID for use in subsequent requests to
16 the server system.

17 Q Does the Newegg server system return a session
18 identifier to the client?

19 A It does. In fact, that's shown here by --
20 we've seen this before, too -- by the set cookie
21 commands.

22 In this particular case, the set cookie
23 command involves customer log-in, which is the session
24 ID for the logged-in session.

25 Q Is there a standard cookie protocol now,

1 Doctor, somewhere?

2 A Yes. That's probably the result of another
3 RFC -- in fact, I have it listed at the bottom here.
4 It's one of the exhibits -- RFC 2109 that describes how
5 client computers store cookies.

6 Q Would you look at Exhibit 26 in your binder
7 for me, please?

8 A Yes.

9 Q Is that, in fact, the RFC 2109?

10 A It is. It's entitled: Http State Management
11 Mechanism. We've come across this term state before.
12 And the use of the cookies is a mechanism to allow state
13 to be managed, according to this description.

14 Q And the RFCs that you've looking -- the RFCs
15 that you're looking at here, 2109, is that relied upon
16 and treated by you and your peers in the way that the
17 earlier ones were that we discussed today?

18 A Yes. This amounts to a de facto standard
19 that's used by the industry, yes.

20 Q All right.

21 MR. ADAMO: Go back to Slide 95.

22 Q (By Mr. Adamo) In the messages on your slide,
23 the cookie names have a percent sign, 5F, in them. What
24 does that mean? At the beginning.

25 A The -- there's actually -- it looks like

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1 there's a carriage return there, but there's not. The
2 sequence is NV%5FCUS and so on.

3 The percent sign means that the following two
4 characters are to be interpreted as -- all three of
5 those are to be interpreted as a character. And, in
6 fact, it means underlining.

7 Q Okay. Who performs the step of returning?

8 A The returning of the session identifier comes
9 from the client -- or from the server computer to the
10 client. So it's generated by the client -- I'm sorry.
11 It must be getting late in the day.

12 Q It is. Keep going.

13 A The session identifier comes from the server
14 system. So it's created by the server system and sent
15 to the client.

16 Q All right. What about the second aspect of
17 second element 1(c). Does the client in Newegg's system
18 store the session ID for use in subsequent distinct
19 requests to the server?

20 A Yes. As we described earlier through the
21 other patents, this is a cookie, and the cookie that
22 comes from the server to the client is automatically
23 stored, and it's always sent with all following requests
24 to that -- to that same web server.

25 So, yes, it's stored and is sent with

1 subsequent requests, as required by this claim.

2 Q Who performs the step of storing?

3 A The storing is done by the client, the
4 server -- the client computer. It's also called a buyer
5 computer.

6 Q Does Newegg direct, instruct, or control the
7 client computer to store the session identifier?

8 A This fragment -- yes. The fragment we're
9 looking at here is part of the html code that is sent
10 from the server to the client. The client browser
11 executes this code and then performs the storing
12 operation for all of the cookies that are contained in
13 the message.

14 Q Is this essentially the situation with cookies
15 that you described to us earlier?

16 A Yes. It's precisely the situation I described
17 earlier.

18 Q What did you conclude about whether the Newegg
19 system meets element 1(c)?

20 A For the reasons that I've described here in
21 detail in my report and summarized it, it meets this
22 claim element.

23 Q Element 1(d), let's move on to the final step,
24 actually. What does that require?

25 A Well, this requires that the system operate

1 the way I just described it does.

2 In other words, this requires that it actually
3 be appended -- the stored session identifier be appended
4 to each of the subsequent requests from the client to
5 the server. And that's the way the browsers work.

6 Q Did this, in fact, occur in the Newegg's
7 system?

8 A Yes, it does. This cookie is the cookie that
9 is stored on the client, and all the cookies that come
10 from that server go back to that server with every
11 subsequent request.

12 Q Did the Court provide a definition for
13 appending, Dr. Grimes?

14 A It provided it -- as I recall, this -- this
15 term for appending was actually in a different term, but
16 at least indirectly, it defined what appending means,
17 yes. And it was tagging, affixing, or supplementing.

18 Q Is what you just described, this cookie line
19 that we're looking at in your Slide 96, does that come
20 within the Court's definition of appending?

21 A It does. It does. The cookie is added to --
22 all the cookies for that server are added to the http
23 message when it is sent back to the server.

24 Q Who performs the step of appending?

25 A Appending is done by the client, by the

1 browser, basically, on the client computer.

2 Q All right. Again, does Newegg direct,
3 instruct, or in some manner, control the client to
4 perform the step of appending?

5 A It does. The way that the browsers work, they
6 receive the html code from the server, and when they
7 send the next request, they automatically perform this
8 appending based on the -- the operation of the -- the
9 only operation of the browser.

10 Q What did you conclude about whether the Newegg
11 system meets element 1(d)?

12 A It meets element 1(d).

13 Q All right. I think we've gone through all
14 four elements of Claim 1 of the '639 patent. Would you
15 tell the ladies and gentlemen of the jury what your
16 opinion is about whether the newegg.com system meets
17 that claim?

18 A For the reasons that I've recited and
19 summarized today, it meets all the elements of Claim 1.

20 Q Did you also consider whether neweggmall.com
21 meets all the elements of Claim 1?

22 A I did. And based on my analysis, Newegg Mall
23 also meets all of the elements of Claim 1 for all the
24 same reasons that newegg.com meets it.

25 Q Let's turn to Claim 60 now in the '639 patent.

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1 Sixty depends on Claim 1, Doctor; is that correct?

2 A That is correct. And Claim 60 has four parts
3 to it.

4 Q All right. What's the first -- let's look at
5 60(a). What's the first requirement of Claim 60 then?

6 A This is everything from Claim 1, plus at least
7 one service request includes a purchase request. And
8 the purchase request in turn has to include an
9 associated user identifier.

10 And so the html that's shown here, which
11 occurs when you click the submit order button, in fact,
12 generates a service request, and it does, in fact,
13 include an associated user identifier, which turns out
14 to be my g-mail or e-mail address.

15 Q Did you conclude that at least one service
16 request in the Newegg's system comprises a purchase
17 request?

18 A Yes, I did.

19 Q Did the Court provide a definition for a
20 purchase request?

21 A It did.

22 It's one or more messages requesting a
23 purchase. And in fact, that's part of the shopping
24 analysis that I did.

25 Q Why then did you conclude that Newegg's system

1 has a purchase request, briefly?

2 A Because of the -- this is part of the http
3 traffic that results from clicking the submit order
4 button.

5 Q Did you conclude that the purchase request
6 also includes a user identifier?

7 A It does, because the -- my name here and
8 e-mail address is what I used as the user identifier on
9 the Newegg website.

10 Q What did you conclude about whether the Newegg
11 system then meets element 60(a)?

12 A I concluded that it does meet all the
13 requirements for element 60(a).

14 Q All right. 60(b). What does element 60(b)
15 require?

16 A 60(b) says that upon receipt of the purchase
17 request at the server, the server needs to access user
18 information associated with this identifier that it got
19 in the message, and the information has to be sufficient
20 to charge an account associated with the user and the
21 purchase price of the product identified by the purchase
22 request.

23 Q Does Newegg meet this step?

24 A It does. This page that we've seen before,
25 which occurs as part of the checkout process, includes,

1 you know, my name, my credit card number, expiration
2 date, as well as the total purchase price for the
3 product identified in the request.

4 Q Having had identity fraud problems for years,
5 Doctor, I congratulate you that you took care on these
6 slides to knock out your credit card information.

7 A Yes, I did.

8 Q All right. Is the information accessed when a
9 user makes a purchase request?

10 A Yes, it is. When the request is made, the
11 server accesses the user information.

12 Q Does the purchase request identify the
13 purchase price?

14 A It does. That's actually shown in the next
15 slide where I have another part of the http traffic from
16 the same action, submitting the submit order button.
17 And this fragment of it shows the -- both the product
18 identifier -- actually both product identifiers, as well
19 as the total amount, the \$57 for the two -- for the two
20 products.

21 Q Does it also identify the product or the
22 products to be purchased?

23 A Yes. In blue here is the identifiers,
24 these -- the 160 number and the 12-8 number are the two
25 product identifiers for the two products, the cable and

1 the software.

2 Q Who does the accessing?

3 A The accessing is done by the server system.

4 Q And what did you conclude about whether the
5 Newegg system meets element 60(b)?

6 A My conclusion, in looking at the http traffic,
7 is that it's met by the Newegg system.

8 Q All right. Element 60(c), what does that
9 require?

10 A Well, this is sort of the next step that
11 requires also that the user be charged for the product
12 identified by the purchase request based on the user
13 information.

14 Q All right. And does Newegg charge the user
15 for the product identified by the purchase request?

16 A It does. We've seen this confirmation e-mail
17 before, but in addition, this is a fragment of my
18 American Express card showing the -- showing the
19 transactions -- transaction for the \$57.

20 Q Okay. Now, was the charge, quote, according
21 to the user information, close quote, as the claim
22 element recites?

23 A The user information -- well, the system,
24 based on Mr. Wu's testimony of how it works, uses the
25 user information that it has stored on the server system

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1 to actually complete the charge to my credit card
2 account, because it showed me what the account number
3 was going to be, and then it got the information from
4 the server to cause the charge to occur.

5 Q Who does the charging?

6 A The charging is done -- well, it's initiated
7 by the Newegg server system. I mean, in the end, the
8 charging is actually done by American Express.

9 Q But the starting of the charging operation is
10 by the system?

11 A The initiation of it is done by the Newegg
12 system.

13 Q What did you conclude about whether the Newegg
14 system meets element 60(c)?

15 A It -- for the reasons we've just discussed, it
16 does, in fact, meet and practices claim element 60(c).

17 Q All right. 60(d). What does the last step of
18 Claim 60, element 60(d) require?

19 A Well, 60(d) is satisfied, you know, when your
20 door bell rings, and the guy from DHL says: Here's a
21 package for you. And you look at it, and you see that
22 it's from Newegg and open it up, and it contains the
23 cable that you ordered.

24 So this is evidence that, in fact, the
25 purchase request for the cable has been fulfilled. And

1 since it came to me with the correct address, it was
2 fulfilled based on the user information.

3 Q Is what we're looking at in your Slide 102
4 here, is this a photograph of what actually showed up at
5 your house?

6 A Yes. I took this photograph and provided it
7 so that we could make a slide out of it.

8 Q With respect to the last element of this
9 claim, element 60(d), does the Newegg system meet this
10 element?

11 A Yes, it does. It meets element (d) as is
12 shown here.

13 Q And who does the fulfilling: Newegg or the
14 customer?

15 A Well, the fulfilling is done by Newegg. I
16 mean, this comes out of their warehouse -- one of these
17 three warehouses as you described earlier. I'm not sure
18 where it came from, but, obviously, it came from Newegg.
19 It showed up on my door with a Newegg return address.

20 Q All right. With respect to Claim 60, then,
21 overall, Dr. Grimes, what is your opinion with regard to
22 whether it, in fact, infringes?

23 A Claim 60 is met, so I gave all four elements
24 that we just analyzed a checkmark.

25 Q All right. I misspoke myself. I meant to say

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1 whether the Newegg system infringes. Does the Newegg
2 system infringe Claim 60?

3 A Yes. For all the reasons I gave you, the
4 Newegg system really meets all of the elements of
5 Claim 60.

6 Q Literally?

7 A Literally.

8 Q And is that true for both the log-in session
9 and the checkout session?

10 A Yes, it is.

11 I looked at -- both for the time periods that
12 I indicated when I described it earlier, Claim 60 is met
13 by both the checkout session and by the log-in session.

14 Q All right. Let us look at the last claim of
15 the '639 patent --

16 MR. ADAMO: -- which, Your Honor, I am
17 happy to report is the last claim we are going to do
18 today.

19 THE COURT: Very well.

20 MR. ADAMO: Let's get the poster up.
21 Claim 79. Excuse me.

22 Q (By Mr. Adamo) All right. Is Claim 79
23 dependent or independent, Doctor?

24 A Claim 79 is dependent on Claim 78, which we --
25 which we haven't looked at yet.

1 Q All right. And we've got your poster up, so
2 we've got both 78 and 79 available to you. Let's start
3 with 78(a).

4 What does claim element 78(a) require?

5 A We can look at 78(a) and (b) together,
6 actually. They're very much like Claim 1. In fact, the
7 wording is slightly different but almost identical.

8 And Claim 78(a) adds an additional requirement
9 for the processing in a server system. I already
10 described, when I did Claim 1, that it occurred in a
11 server system, but that wasn't a requirement for Claim
12 1. But it is a requirement for Claim 78.

13 Q So your conclusion about this element, then,
14 is what?

15 A My conclusion is that 78 is met and really for
16 the same reasons that I described for Claim 1(a).

17 Q Who does the processing: Newegg or the
18 customer?

19 A Newegg. It's done by the Newegg -- actually,
20 by the Newegg server system.

21 Q And let's look at element 78(b) on this board.
22 What is your conclusion with respect to that
23 element?

24 A 78(b) is slightly different. It says:
25 Receiving from the client a service request to which an

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1 identifier stored at the client has been appended by the
2 client.

3 So this really refers to an operation at the
4 Newegg server system side, which is what's doing the
5 receiving, and then receiving comes from the client.

6 Q And is it your conclusion that Newegg meets
7 element 78(b)?

8 A Yes. Communication is also done by the http,
9 the hypertext transfer protocol, which is also required
10 for 78(b).

11 Q And so who does the receiving: The customer
12 or Newegg?

13 A Newegg. Newegg does the receiving.

14 Q But doesn't the client have to send a request
15 in order for Newegg to receive it?

16 A Yes, that's true. But that's not required by
17 the claim. What's required by the claim is that it be
18 received from the client, the service request. And that
19 operation is done by the server.

20 Q Is it your understanding that the way the
21 claim is structured, it's not necessary to get into the
22 sending because the claim doesn't talk about the
23 sending?

24 A That's correct. That's correct. The only
25 thing that's necessary here is that the server system

1 receives from a client the service request.

2 Q Does Claim 78(b) have a step of appending or
3 storing a session identifier when it says, quote, a
4 service request to which a session identifier is stored
5 at the client has been appended by the client, close
6 quote?

7 A No. Only that the request that's received
8 contain a session identifier that has been appended by
9 the client.

10 Q Let's look at element 78(c). What do you
11 understand that to require, Dr. Grimes?

12 A This is a further step actually not contained
13 in Claim 1, so it's -- I don't have anything to compare
14 it with in Claim 1. It's by itself. This is a
15 validation step. And then once it's been validated,
16 servicing the service request.

17 Q Does Newegg meet this?

18 A Yes, it does. We have deposition testimony
19 from Mr. Wu that described the validation, and we know
20 that the service request is -- it's serviced because we
21 actually see the results of that.

22 So, in fact, the validation has been
23 identified by Mr. Wu, and the servicing of the service
24 request, if it's valid, can be seen by the http traffic
25 I looked at, plus Mr. Wu's testimony.

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1 Q Is the log-in session ID what you were looking
2 at both in your personal work, as well as looking at
3 Mr. Wu's testimony?

4 A Yes. Yes. The topic under discussion was the
5 log-in session ID.

6 Q Who performs the steps of validating and
7 servicing?

8 A Those are done by the server, the server
9 system, the Newegg server system.

10 Q What is your opinion about element 78(c),
11 Doctor?

12 A 78(c) is also met by the Newegg system.

13 Q All right. And let's look now at Claim 78 in
14 its entirety.

15 Do you have an opinion as to whether Claim 78
16 is met in its entirety?

17 A Yes. All three elements are met for the
18 reasons that I just described, and so I gave all three
19 of them a checkmark.

20 Q Are the elements, in your view, all met
21 literally?

22 A Yes, they're all met literally.

23 Q And who is the actor who's meeting all these
24 elements, as you understand it?

25 A All three of these elements are performed by

1 the Newegg service system.

2 Q All right. Does your analysis that we've just
3 discussed apply not only to the log-in session ID but
4 also to the checkout session ID situation?

5 A I don't recall. I'd have to look at my -- at
6 my notes. I believe so. I believe it also applies to
7 the checkout -- checkout session.

8 Q All right. Did you form an opinion about
9 Claim 78 for the Newegg Mall?

10 A Yes. Claim 78 is met by the Newegg Mall.

11 Q Does the Newegg Mall have the equivalent of
12 the checkout session ID?

13 A I believe so, yes.

14 Q Does that help you refresh your recollection
15 as to whether you -- the analysis would be the same for
16 both the log-in session ID and the checkout session ID?

17 A Yes, it does.

18 The one that doesn't have the checkout session
19 was one of the earlier claims that we looked at, earlier
20 examples that we looked at.

21 In this case, both the log-in session and the
22 checkout session are performed by both the Newegg Mall
23 and by the newegg.com website.

24 Q All right. Let's turn to Claim 79. First
25 element is 79(a), what does that require?

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1 A 79(a) requires everything from 78, plus
2 requires that the server system receive an initial
3 request from the client or a first request from the
4 client.

5 Q Did the Court construe that claim term,
6 Doctor?

7 A It did. It said that first -- initial service
8 request means the first one in a session.

9 Q And does Newegg meet that element, according
10 to your analysis?

11 A Yes, it does. I looked at the http traffic,
12 and there's a cookie that's generated by the server when
13 it receives the request to log in.

14 Q Who does the step of receiving?

15 A Receiving is done by the server system.

16 Q So that's Newegg?

17 A That's Newegg service system, yes.

18 Q All right. Element 79(b). What does claim
19 element 79 (b) require?

20 A That requires that in response to this
21 request, the server system -- actually is what does
22 it -- creates a session identifier, and that's done by
23 the Newegg server system.

24 Q So Newegg does meet this element; is that
25 correct?

1 A Yes, it does.

2 We also have a response to an interrogatory --
3 a response to a question here that says that the
4 customer log-in, which is the log-in session identifier,
5 is created by the Newegg system.

6 Q All right. Would you look quickly in your
7 binder at Exhibit 27 and tell me if that is the
8 interrogatory response that you quote on your Slide 110?

9 A Yes, it is.

10 Q And who does the step of creating?

11 A The creation is done by the Newegg service
12 system.

13 Q 79(c), what does that claim element require?

14 A 79(c) is almost identical to 1(c) and requires
15 this returning of the session identifier to the
16 client -- it turns out it's returned in this customer
17 log-in cookie -- for storage by the client for use in
18 subsequent requests.

19 So I already described earlier how that
20 happens. It happens the same way as it did for element
21 1(c).

22 Q All right. Does Newegg meet this element?

23 A Yes, it does. It meets element 79(c).

24 Q Who does the step of returning?

25 A The step of returning is done by the Newegg

1 service system.

2 Q I think we've now been through all of the
3 elements of Claim 79. Did you form an opinion regarding
4 the infringement or lack thereof of this claim, Doctor?

5 A I did. I concluded that element -- all the
6 elements in Claim 79 were met, so I gave them all a
7 checkmark.

8 Q And now the same question I asked you a few
9 seconds ago, a few minutes ago. The logged-in session
10 seemed to be the focus of what we were just discussing.

11 Does the analysis also apply to the checkout
12 session?

13 A Yes, it does. It applies to both the checkout
14 session and the log-in session for both of these claims.

15 Q All right. Is it your view, Doctor, then,
16 with respect to both of the asserted '639 patent claims,
17 that they are infringed by Newegg?

18 A Yes.

19 So just to summarize, both newegg.com and
20 newegg.ca, the Canadian website, meet all elements of
21 the asserted claims that are listed here, which is the
22 ones we went through this afternoon.

23 Q All right. We got a tad ahead of ourselves.
24 We'll get to your last slide.

25 Can you give me a best estimate of how many

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1 hundreds of hours of your work it has taken for you to
2 generate everything that we've spent the last almost
3 four hours going through? Can you give us an estimate?

4 A Wow. Several hundred, 200, 300, something in
5 that -- 400, something in that range. It was -- it was
6 a lot of work.

7 Q And as we have been asking you questions and
8 you've been providing the information to the ladies and
9 gentlemen of the jury this afternoon, were you going at
10 a pace that you felt was appropriate due to the
11 seriousness of this nature and the complexity of the
12 subject matter?

13 A Yes, indeed. I maybe should apologize for
14 giving some long answers, but I really want to make sure
15 that my answers are understood. So I may have been able
16 to make it shorter, but I guess I erred on the side of
17 trying to make sure that the answers were clear.

18 Q All right. So let's look at your summary, and
19 then I'm going to sit down.

20 A Okay.

21 Q Would you as succinctly, as briefly as you
22 can, tell us what the overall summary of your opinions
23 are with respect -- or is with respect to the seven
24 claims of the three patents that are at issue here
25 regarding Newegg?

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1 A Yes. As I stated very briefly before,
2 newegg.com, newegg.ca websites meet all of the elements
3 of this list of asserted claims.

4 Q Literally?

5 A Literally.

6 Q All right. With respect to the
7 neweggmall.com.

8 A I did a subset analysis of a subset of the
9 claims, and these are the claims you asked me about as
10 we went through this afternoon.

11 So in summary, there are these four claims
12 that I analyzed, and the neweggmall.com website meets
13 all the elements of these four claims.

14 Q Thank you, Dr. Grimes.

15 MR. ADAMO: Your Honor, I pass the
16 witness.

17 THE COURT: All right. Very well. Thank
18 you.

19 All right, Ladies and Gentlemen of the Jury, I
20 think this would be a good stopping place for today.
21 We'll come back in the morning and begin with the
22 cross-examination of Dr. Grimes.

23 You've paid very good attention today. Thank
24 you very much for that. Please go home and get a good
25 night's sleep tonight.

1 Then Slide 13 is founded on Exhibit --
2 Plaintiff's Exhibit 245, to which we object, and it
3 mentions net sales of \$2.1 billion, and we object to
4 that as irrelevant and unfairly prejudicial.

5 Slide 15 is founded upon Plaintiff's
6 Exhibit 174, which is objected to, and here again, this
7 is a bar graph showing Newegg's extent-of-use, and it
8 goes back to 2001, and we object to anything prior to
9 2007 as irrelevant, misleading, and potentially
10 prejudicial.

11 Slides 16, 17, 18, and 19 are all of the
12 same nature. They are all founded on the documents that
13 I objected to specifically. They state the net sales
14 numbers and gross profits, as I've argued earlier, and
15 we submit that a calculation, based on that, and a
16 showing of that is irrelevant and prejudicial.

17 And so, Your Honor, those are the
18 Defendant's objections to the underlying exhibits, 162
19 through 176 and 245, and the slides that are based upon
20 them.

21 THE COURT: Okay. Thank you.

22 Let me ask you this, Mr. Sayles:
23 Obviously, you have known what their damage expert's
24 approach was since you had his report and deposed him, I
25 take it.

1 preserved.

2 MR. SAYLES: All right. If my objections
3 are preserved and they're offered in evidence, that's
4 all I can do.

5 THE COURT: That's right. Okay.

6 MR. ADAMO: Okay.

7 THE COURT: Thank you.

8 MR. ADAMO: Thank you.

9 THE COURT: Bring the jury in, please.

10 COURT SECURITY OFFICER: All rise for the
11 jury.

12 (Jury in.)

13 THE COURT: Please be seated.

14 All right, Ladies and Gentlemen of the
15 Jury. Welcome back. I hope you had a good night's
16 sleep, and you're ready to put in a full day today,
17 so -- you did a very good job yesterday paying close
18 attention. I saw you taking notes and listening to the
19 witness.

20 So we'll continue now with the
21 cross-examination of Mr. Grimes.

22 JACK GRIMES, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

23 CROSS-EXAMINATION

24 BY MR. BALDAUF:

25 Q Good morning, Dr. Grimes.

1 A Good morning.

2 Q Just wanted to touch a few points about your
3 background.

4 If I understood your testimony yesterday, when
5 you're not enjoying your semi-retirement, you work as an
6 expert witness, correct?

7 A I work as an expert witness, and I also am on
8 the Board of Directors of a startup company.

9 Q And you've been doing litigation expert
10 witness work since the 1990s?

11 A Yes. It started out part-time and have really
12 remained part-time all during that time. There was
13 some -- a year or two where I did it pretty much
14 full-time, but it sort of started part-time and now is
15 part-time.

16 Q And you work with an expert broker firm?

17 A Yes, I do.

18 Q So for the hourly fee that you're paid, some
19 of that goes to the broker firm; you keep the rest?

20 A Yes. That's the way it works, uh-huh.

21 Q And you've worked with the -- with counsel for
22 Soverain in a number of cases before this, correct?

23 A Yes. I've worked with them on several cases.

24 Q Is it true that you personally have never
25 designed an E-commerce system?

1 A No, I have not been involved in the design of
2 an E-commerce system, only the security aspects of
3 E-commerce, which I talked about yesterday.

4 Q Now, you took us through the claims yesterday,
5 and I certainly don't want to repeat all of that. I
6 commend you. That was a test of endurance.

7 But in all of those claims, in every one of
8 the claims, you talked about this limitation of a
9 customer computer or a buyer computer, correct?

10 A Yes, that's correct.

11 Q You were --

12 A Not all -- not all of the claims, but many of
13 the claims dealt with that, yes.

14 Q And those claims that had that limitation, do
15 you agree that the customer computers is supplied by the
16 customer?

17 A Yes, it is, with the exception of the testing
18 that Newegg does. But in almost all cases, it's
19 supplied by the customer. It's the customer's computer.

20 Q And would you agree with me that Newegg does
21 not somehow force its customers to connect to its
22 website?

23 A No. The customer decides they want to
24 purchase something, and they have to type in the Newegg
25 URL or otherwise connect to the website.

1 Q And they do so of their own free will.

2 A Certainly, just like you would, you know, pick
3 Home Depot of your own free will. It's very much the
4 same, yes.

5 Q And if no customer ever connected to the
6 Newegg website, would you agree that there would not be
7 a customer computer for the purposes of the claims?

8 A Well, the -- I mean, this is the -- Newegg's
9 description of their system.

10 Q Correct. But I'm asking you this: If no
11 customer connects, is there a customer computer present?

12 A The Newegg system would still represent a
13 customer computer; but if a customer doesn't connect,
14 then there would be no usage of the customer computer,
15 if that's -- if that's your question.

16 Q It is. Thank you.

17 A Okay.

18 Q You also testified that Newegg instructs its
19 customers how to use its website on its help page,
20 correct?

21 A Yes, among other things. But the help page is
22 quite extensive.

23 Q Can a customer choose not to follow these
24 instructions?

25 A The customer, you know, may not even be aware

1 of the web page; but if they are, then it provides
2 instructions.

3 Q But the customer can decide not to follow them
4 of their own free will?

5 A Certainly. I don't know why a customer would
6 go to a help page and then ignore the instructions, but
7 that's possible, certainly, yeah.

8 Q And based upon your testimony yesterday, I
9 take it that you agree that a customer cannot shop on
10 the Newegg website unless he or she has turned on
11 cookies on their computer?

12 A The browser -- the browser on their computer
13 must have cookies enabled in order to actually purchase
14 products.

15 Q Do you agree with me that it's up to the
16 customer whether or not they enable cookies?

17 A As I said yesterday, the default is that
18 they're enabled, but the customer could disable cookies
19 for some reason.

20 Q If the customer disables cookies for some
21 reason, can Newegg somehow go into that customer
22 computer and turn them on?

23 A No. The customer computer -- the customer has
24 to set the -- has to enable cookies; otherwise, they
25 can't purchase products.

1 Q Now, once the customer checks out at the
2 Newegg website, who's responsible for paying for the
3 selection?

4 A Well, the customer's credit card is charged,
5 so, ultimately, the customer, of course, pays his credit
6 card bill. I mean, he's purchasing the product, so the
7 customer pays for them in the end.

8 Q So do you agree with me that Newegg is not
9 responsible for paying for these products if the
10 customers do not do so?

11 A Actually, I haven't thought about that. I
12 don't know what happens. I mean, customer -- Newegg
13 certainly pays for the inventory, so they have purchased
14 the inventory. If the customer doesn't pay, I don't
15 know what happens, actually.

16 Q I'd like to talk about the '314 patent.
17 From your testimony yesterday, you told us
18 that Soverain is asserting the infringement of only
19 Claims 35 and 51, correct?

20 A Yes, that is correct.

21 Q And these claims depend upon Claim 34.

22 A Right. Exactly right, uh-huh.

23 Q So if Newegg does not infringe Claim 34, would
24 you agree with me that it cannot infringe 35 or 51?

25 A Yes. That's the way it works. You have to

1 have all of the -- for 35, you have to have 35 and then
2 all of the elements of 34.

3 Q And just to be clear, with respect to the
4 elements, the portion in brackets, I believe you
5 testified yesterday that those are not actually in the
6 claim, that you put those in for our ease of reference,
7 correct?

8 A Yes, that's correct. Anything in brackets
9 like that are text that I've added.

10 Q I'd like to look at 34(b), at least one buyer
11 computer for operation by a user desiring to buy
12 products.

13 MR. BALDAUF: If you could please pull up
14 Appendix B, Page 2, please, Ms. Johnston.

15 If you could please highlight -- or
16 enlarge the very first paragraph on the right side.

17 Q (By Mr. Baldauf) And, Dr. Grimes, we're taking
18 a look at your expert report that you prepared in this
19 case, correct?

20 A Yes, that's correct. This is my -- this is
21 Appendix C from my expert report.

22 Q And this is the portion of your report where
23 you compare the claim elements of Claim 34 of the '314
24 patent to that functionality of the Newegg website that
25 you believe satisfies those limitations, correct?

1 A Yes, that's correct.

2 Q Okay. With respect to the limitation in
3 34(b), at least one buyer computer for operation by a
4 user desiring to buy products, you wrote that a Newegg
5 customer computer, when connected to the Newegg server
6 system, through Newegg's website via the internet
7 becomes a buy computer.

8 So is it your testimony that the customer's
9 computer is the buyer computer?

10 A Yes. It becomes the buyer computer after it
11 connects to the Newegg server system.

12 Q And, again, this computer is supplied by the
13 customer.

14 A Yes. It's the customer's computer, and it
15 becomes a buyer computer, matching this claim
16 limitation, when it connects to the Newegg server
17 system. Then it becomes part of the Newegg server
18 system.

19 Q Now, Claim 34(b) also requires a user desiring
20 to buy products. Is the user in this claim element the
21 customer?

22 A Yes. The claim requires the buyer computer
23 for operation by the user. So the focus of the claim is
24 the buyer computer, and it is the -- the user is the --
25 is the customer, with the exception of the testing

1 situations that I mentioned.

2 Q Does Newegg supply the customer or user?

3 A No. The customer is, you know, people like
4 you, and I who want to buy products.

5 Q And we talked about this before. Newegg does
6 not somehow control the customer and force them to log
7 on to their website.

8 A No. No. That's -- that's also not required
9 by the claim.

10 Q But you agree that the customer decides to
11 access the Newegg website by their own free will.

12 A Certainly. Certainly.

13 Q So do you agree with me that it's the customer
14 that satisfies the limitation of a user?

15 A Well, the limitation is for a buyer computer
16 for operation by a user. So the limitation of a buyer
17 computer, the buyer computer is the customer's computer;
18 and when it's connected to the Newegg server, it becomes
19 a buyer computer.

20 Q Right. But I'm asking you about the latter
21 portion of that claim, for operation by a user. Who
22 satisfies that portion? The user?

23 A Well, the buyer can --

24 Q Is that the customer, or is that Newegg?

25 A With the exception of the testing activities,

1 it's the customer that actually does operate the
2 computer.

3 Q Thank you.

4 If I could turn your attention to what you
5 have designated as 34(f). Said buyer computer being
6 programmed to receive a plurality of requests from a
7 user to add a plurality of respective products to a
8 shopping cart in said shopping cart database.

9 Is the cookie stored in the user's computer
10 browser of the Newegg shopping cart?

11 A The cookies stored in the browser contains the
12 contents of the shopping cart, yes. You can think of it
13 as a shopping cart, but it contains the contents of the
14 user shopping cart. It's the products he wants to
15 purchase.

16 Q So is that the shopping cart?

17 A You can think of it that way. I think of it
18 as a cookie representing the contents of the shopping
19 cart.

20 Q Now, I just want to be very clear on this
21 point, because we did talk about this in your
22 deposition. And I'm not sure we're saying something
23 different, but I just want to make sure we're on the
24 same page.

25 If you could please turn to Page 131 of your

1 deposition transcript.

2 Do you have that in front of you, sir?

3 A Yes, I do.

4 Q If you look to Line 11:

5 QUESTION: So you've interpreted a
6 shopping cart to include cookies?

7 ANSWER: The contents of the shopping
8 cart for multiple clicks are stored in a cookie called
9 the Newegg cookie.

10 QUESTION: A moment ago, you referred to
11 that as the shopping cart.

12 ANSWER: Yes, that's the shopping cart.
13 The contents of the shopping cart are stored in the
14 cookie called the Newegg cookie.

15 Q (By Mr. Baldauf) So is it fair to say that
16 you're referring to that cookie as the shopping cart?

17 A Yes, you could say that.

18 Q Okay.

19 A That would be a good way to say it.

20 Q Is there any portion of the '314 patent that
21 describes the shopping cart as being a cookie?

22 A I don't -- I don't recall specifically. I
23 think not. Yeah.

24 Q Would you agree with me that only a
25 server-side shopping cart is disclosed in the '314

1 patent?

2 A Server-side shopping cart. A server-side
3 shopping cart is disclosed.

4 Q Would you agree with me that that's the only
5 type of shopping cart that's disclosed in the '314
6 patent?

7 A I don't recall if it is the only thing, but it
8 could be the only thing. It certainly is disclosed. I
9 recall that, yes.

10 MR. BALDAUF: If we could turn to Page 4
11 of the appendices of Dr. Grimes's report.

12 Q (By Mr. Baldauf) And we're still talking about
13 limitation 34(f).

14 MR. BALDAUF: If you could move it to the
15 other side of the page and the paragraph beginning by
16 selecting. That one. Thank you.

17 Q (By Mr. Baldauf) Sir, you wrote: By
18 selecting, clicking on an ad to cart or download button,
19 a user is requesting to add a selected product to the
20 shopping cart.

21 So this is the request to add the product to
22 the shopping cart?

23 A That is correct. That's what I testified to
24 yesterday.

25 Q Okay. And this is an action taken by the

1 user, correct, the customer?

2 A Yeah. The -- the claim requires that the
3 buyer computer be programmed to receive the request.
4 The request is a mouse click by the user, uh-huh.

5 MR. BALDAUF: If we could please move to
6 the next page.

7 If you could blow up the sentence that
8 says: A user may request to add.

9 Q (By Mr. Baldauf) Okay. Now, here you write:

10 A user may request to add multiple items to
11 the shopping cart by clicking multiple add-to-cart or
12 download buttons.

13 So is it your contention that when the
14 customer clicks the add-to-cart button multiple times,
15 that this is the plurality of requests from the user to
16 add the plurality of products to the shopping cart?

17 A Almost. The -- the requests are generated by
18 the multiple clicks, and those clicks, of course, are
19 performed by the user. And the buyer's computer is
20 programmed to operate on those clicks, basically,
21 receive those requests.

22 Q So the claim requires a plurality of requests
23 from a user to add a plurality of respective products to
24 a shopping cart, correct?

25 A That's how the buyer computer must be

1 programmed to do that, yes.

2 Q Do you agree that a plurality means more than
3 one?

4 A It means two or more, that's correct, yes.

5 Q So is this limitation satisfied if the
6 customer only puts a single item in the shopping cart
7 and then checks out?

8 A No. The claim language is very clear. It has
9 to be programmed to receive a plurality of requests from
10 the user.

11 Q So to --

12 A So there has to be -- the structure has to
13 contain the ability for the user to make multiple
14 requests.

15 Q So to satisfy the system in this claim, the
16 user has to put multiple items in the shopping cart?

17 A That's what I -- that's the evidence I put
18 forward, yes.

19 Q Okay. So let's talk about that instance when
20 the customer puts multiple items in the shopping cart.

21 I believe it was your testimony yesterday that
22 these servers here on the Newegg system constitute the
23 shopping cart database, correct?

24 A No.

25 Q No? I'm sorry. The shopping cart computer.

1 A Yes. The shopping cart database --
2 fortunately, we have different colors, I guess.

3 Q Yeah. It looks like Star Wars.

4 A The shopping cart database is represented by
5 this block here that has --

6 Q Okay.

7 A -- shopping cart DB written underneath it.

8 Q Okay. And both of those are server-side,
9 correct?

10 A Yes, they are. They're both part of the
11 Newegg server system.

12 MR. BALDAUF: So if we could refer to
13 Slide 42 from Dr. Grimes' presentation yesterday.

14 Q (By Mr. Baldauf) So just to -- it should be on
15 the screen in front of you, sir. This is a slide that
16 you had prepared in connection with your direct
17 yesterday, correct?

18 A Yes, that's correct.

19 Q Okay. So if you could walk us through this,
20 please. Can you explain this to us once again? What's
21 happening here?

22 A Certainly. And this relates to 34(f), which
23 we've been --

24 Q Right.

25 A -- which we've been talking about.

1 Q That's what we're discussing.

2 A Right. So 34(f) requires the buyer computer
3 to be programmed to receive requests.

4 So this shows that the buyer computer is
5 programmed. It's the -- the add-to-cart button is what
6 has the html code behind it, if you will, that it's
7 executed when the button is clicked, so the buyer's
8 computer is programmed.

9 When the add-to-cart button is clicked -- in
10 this case, let's assume it's for the first time -- in
11 response to the click, the program -- the buyer computer
12 program running on the browser takes the add-to-cart
13 button, creates a message -- in fact, this is an
14 add-to-cart message, and it contains the product
15 identifier associated with the product right next to the
16 add-to-cart button, the cable, okay?

17 Then it goes to -- that message then goes to
18 the Newegg server system, which is -- which is this
19 server block here (indicates), and then the server
20 system generates a new cookie representing the shopping
21 cart contents or, if you will, the shopping cart --

22 Q Uh-huh.

23 A You can call it that, if you like.

24 Q Well, or like you have.

25 A Yeah. And then sends this cookie containing

1 this content, this product identifier, back to the
2 client computer where it is stored by the browser in the
3 cookie file.

4 Q Okay. So while that's going on, those
5 requests are going back and forth, at no time are they
6 yet going to the shopping cart database, correct?

7 A Not yet, no. That's not the way the Newegg
8 system works.

9 Q Now, the claim itself reads: A plurality of
10 requests from a user to add a plurality of respective
11 products to a shopping cart in a shopping cart database.

12 Would you agree with me that while the
13 customer is adding products --

14 MR. BALDAUF: Can you keep that up,
15 please?

16 Q (By Mr. Baldauf) -- while the product -- while
17 the customer is adding products to a shopping cart,
18 pressing add-to-cart, pressing add-to-cart, but prior to
19 the time they hit checkout, that shopping cart is not in
20 the shopping cart database while the products are being
21 added?

22 A That is correct. The add-to-cart button
23 causes the cookie to be updated with one item or two
24 items or however many times they press it. That cookie
25 representing the shopping cart contents is stored by the

1 browser on the client's computer.

2 Q So it's never in the shopping cart database
3 while the customer is adding the products?

4 A Yes. There are other shopping carts in the
5 shopping cart database but not -- not the one that's
6 currently being used by the customer to collect his
7 products, that's right.

8 Q Okay. And then I believe, based upon your
9 chart that you put together, that the Newegg cookie
10 shopping cart, that only -- the contents only go to the
11 shopping cart database once the customer hits checkout;
12 is that correct?

13 A Yes. That -- clicking checkout, as I
14 testified yesterday, sends -- the browser is programmed
15 to send another message when the button is clicked.

16 So that checkout message goes along with the
17 cookie, and it's received by the server. At that point,
18 the server then takes the information from the cookie
19 and inserts it into -- into the shopping cart database.
20 So that's -- our picture is gone, but that's -- that's
21 the time at which the shopping cart database is, if you
22 will, loaded with the information from the customer's --
23 from the customer's cookie.

24 Q I know --

25 A The cookie that is stored on the customer's

1 website.

2 Q I'm sorry. Were you finished? I'm sorry.

3 And would you agree with me that that happens
4 only once, that all of those contents are sent to the
5 shopping cart database only once when checkout is hit?

6 A Well, it happens every time the checkout
7 button is selected. But if the customer is through
8 shopping, does one checkout operation, then it's -- the
9 database is updated only once.

10 Q Would you agree with me that a request to
11 check out is not a request to add a product to the
12 shopping cart?

13 A That's correct. It's a request to check out.
14 I mean...

15 Q During your testimony yesterday, you talked at
16 length about these claims and the various limitations.
17 I don't recall a discussion, though, about one word in
18 Claim 34(f), and that's respective. I don't believe you
19 talked about that yesterday.

20 That's a word we hear a lot, respective,
21 respectively. Do you agree with me respective means
22 something relating to two or more things, but they're
23 regarded individually?

24 A I have thought about what respective means in
25 this claim -- this claim element, and I believe it

1 represents the relationship between the request and the
2 products.

3 Q My question is just what respectively means.

4 A Respectively?

5 Q Yes.

6 A You know, I haven't really thought about it
7 other than in the context of the claim.

8 Q Okay. Is that not a word you're familiar
9 with?

10 A It's not a word I use, no.

11 Q Okay.

12 A And the important thing is what it means
13 relative to the claim, and that's really all I focused
14 on.

15 Q Okay.

16 A I didn't actually think about what it may mean
17 independent of that, yes.

18 Q Okay. I'd like to now turn to what you have
19 marked as element 34(h).

20 The language to modify said shopping cart in
21 said shopping cart database to reflect said plurality of
22 requests to add said plurality of products to said
23 shopping cart, would you agree with me that plurality
24 means more than one?

25 A Yes. Two or more. We've -- we've already

1 talked about that, uh-huh.

2 Q And as you stated previously, the contents of
3 the shopping cart are only sent bundled together when
4 the checkout button is hit to the database.

5 A Yes, that's correct. The cookie is sent,
6 which contains multiple items.

7 Q Prior to this transfer to the shopping cart
8 database, there is no shopping cart -- filled shopping
9 cart in the shopping cart database, correct?

10 A Nothing that corresponds to the customer's
11 purchase. I mean, the database contains -- I mean,
12 there are other customers, and so it contains their
13 shopping carts, but nothing -- there's no shopping cart
14 in the database that relates to the purchase items that
15 are in the customer's cookie.

16 Q Right. And that's what we're talking about.

17 A Yeah. That's correct, yes, uh-huh.

18 Q So you'll agree that with respect to this
19 customer, prior to the time that they hit checkout, the
20 shopping cart database is empty.

21 A No. It contains the elements from the other
22 customers who are doing checkout.

23 Q Right.

24 A So the database is not empty. There's just no
25 shopping cart in the shopping cart database that

1 corresponds to the cookie, which is what the customer is
2 attempting to do.

3 Q And that was my question.

4 A Okay.

5 Q I'm talking about that specific customer.

6 A Yes. For that specific customer, that's
7 correct. There's no shopping cart in the database until
8 after the checkout button is pressed or clicked.

9 Q Now, with the Court's claim construction,
10 modify the shopping cart means to change, correct?

11 A Yes. Specifically to change an instance of a
12 shopping cart in the shopping cart database.

13 Q To change, to change it.

14 A Modify. To change, I would say, is a fair
15 interpretation of modify.

16 Q So is it your testimony that placing the
17 contents of the shopping cart cookie into the shopping
18 cart for the first time -- into the shopping cart
19 database -- I'm sorry -- for the first time constitutes
20 modifying the shopping cart in the shopping cart
21 database?

22 A It constitutes modifying an instance of the
23 shopping cart in the shopping cart database.

24 Q What do you mean by an instance?

25 A Well, this is based on Mr. Wu's testimony. He

1 described it as a two-step process.

2 First, there's an instance created, which
3 means there has to be some identification of some space
4 in the shopping cart computer database, and that's step
5 one.

6 Step two involves moving the contents of the
7 cookie into that space, which is the shopping cart in
8 the database.

9 So it's a two-step process.

10 Q I believe that first step, from your report,
11 you refer to that as the assigning of the shopping cart
12 ID.

13 A That's the way -- that's the way Mr. Wu
14 described it as step one, yes.

15 Q What is the shopping cart ID?

16 A Well, the shopping cart ID, as best as I
17 understand it, is an identification of some space in the
18 shopping cart database.

19 Q Is the shopping --

20 A It's assigned and allocated to the shopping
21 cart ID.

22 Q In fact, it's a number, is it not? It's a
23 counter. It's a simple number.

24 A Well, it's a -- in computer science terms, we
25 call it an identifier. It's a -- it's a pointer. It's

1 a -- it's a reference to space in the shopping cart
2 database.

3 And you can think of it as a number, but that
4 doesn't give you any idea of the -- of the meaning of
5 the number. The number is an address or a reference
6 into the database.

7 Q Are there any empty fields in this shopping
8 cart identifier that can be populated with information?

9 A No. The identifier is a reference to the
10 space in the database.

11 Q So the shopping cart identifier itself
12 contains no fields that can be changed or modified?

13 A Well, the identifier is a number, which is a
14 reference to the space.

15 Q Is the shopping cart ID a stored
16 representation of a collection of products?

17 A No. That's the construction for a shopping
18 cart --

19 Q Right. So how --

20 A -- not a shopping cart instance.

21 Q So you're saying, to be an instance of a
22 shopping cart, that does not have to conform to the
23 definition the Court gave us for a shopping cart?

24 A The Court gave us a definition of a shopping
25 cart, which I used, which is a...

1 Q Which you used for shopping cart.

2 A Yes.

3 Q And now you're saying that an instance of a
4 shopping cart doesn't have to satisfy the definition of
5 a shopping cart?

6 A Well, an instance is -- refers to the space in
7 the database where the shopping cart contents will go.

8 Q But an instance of a shopping cart. That's
9 what you said.

10 A Yes.

11 Q An instance of a shopping cart.

12 A Yes.

13 Q So --

14 A That's an instance of a shopping cart.

15 Q So the definition of a shopping cart, though,
16 is a stored representation of a collection of products,
17 agreed?

18 A Yes.

19 Q And the shopping cart ID is not a stored
20 representation of a collection of products.

21 A Well, there's a difference between an instance
22 of a shopping cart and a shopping cart. The Court
23 didn't construe an instance of a shopping cart. It used
24 that as a part of the construction for the word modify.
25 So --

1 Q So is it your testimony --

2 MR. ADAMO: Let him finish.

3 MR. BALDAUF: Sorry.

4 MR. ADAMO: Thank you.

5 A So I used the Court's construction of a
6 shopping cart, and then I said, okay, what does modify
7 mean?

8 And the Court said, well, modify means to
9 change an instance of a shopping cart in the shopping
10 cart database.

11 Q (By Mr. Baldauf) So just so I'm clear, in
12 connection with your definition of instance of a
13 shopping cart, you did not use the Court's definition of
14 shopping cart?

15 A I did, because the shopping cart is the
16 destination for where the information goes -- the
17 product information goes, and it's actually not a
18 shopping cart until the information is there, because
19 the shopping cart is a stored representation of
20 products.

21 So it doesn't make any sense to have a
22 shopping cart if it doesn't contain these items, because
23 it doesn't contain a stored representation of products.

24 Q I'll agree with you that I don't think this
25 makes sense, but the definition is very clear. An

1 instance of a shopping cart.

2 MR. ADAMO: Your Honor, objection at this
3 point. They've been through this four times. This is
4 starting to get argumentative.

5 MR. BALDAUF: That's fine. All right.
6 We can move on.

7 THE COURT: All right. Restate your
8 question.

9 MR. BALDAUF: I think I made my point.

10 MR. ADAMO: Thank you.

11 MR. BALDAUF: Thank you. I apologize. I
12 carrying that too far.

13 THE COURT: All right. Question and
14 answer, Counsel.

15 Q (By Mr. Baldauf) Sir, with respect to this
16 functionality in the Newegg website, you know, this idea
17 of modifying the shopping cart in the shopping cart
18 database, have you reviewed the Newegg computer code
19 relating to this functionality?

20 A No, I have not. I relied on Mr. Wu's
21 testimony.

22 Q Have you examined any of the Newegg -- Newegg
23 source code?

24 A Not directly, no.

25 Q Just to step back one second, do you agree

1 with me that the -- while the customer is shopping,
2 it -- the cookie for the shopping cart is being updated
3 in the customer's browser as he's hitting the
4 add-to-cart button, as opposed to in the shopping cart
5 database?

6 A Yes. When a customer clicks the add-to -- I
7 testified about this yesterday. When a customer clicks
8 the add-to-cart button, the html in the buyer computer
9 is programmed to send a message to the server computer.
10 The server computer then returns the -- a cookie --
11 either it's the first edition or second edition, but in
12 either event, it returns a cookie that contains the
13 results of that.

14 And the server computer, you know, knows that
15 cookies are enabled; otherwise, this operation won't
16 succeed. And so it's automatic that the browser stores
17 this -- stores this representation of the shopping cart.

18 MR. BALDAUF: If we could please pull up
19 Page 14 of Exhibit C?

20 And if we could pull up the first two
21 sentences of the first paragraph. Keep going down. The
22 first -- keep going down. Right. Up a little bit.

23 Yeah. That's good right there.

24 Q (By Mr. Baldauf) This comes from your report
25 where you wrote in your report that Newegg's system of

1 modifying the shopping cart in the cookie has the
2 advantage of simplifying database management.

3 What do you mean by that?

4 A Well, there's a -- an operation -- the process
5 of purchasing items and putting them in a shopping cart,
6 the shopping cart information has to be stored
7 somewhere.

8 So the design -- this is under the Doctrine of
9 Equivalents now --

10 Q Right.

11 A -- since we're looking at it here, yeah.

12 So the design alternative that the implementer
13 of an E-commerce system considers is, well, where am I
14 going to store that information? Am I going to store it
15 on the server side --

16 Q Which is what's disclosed in the '314 patent,
17 correct?

18 A That's correct.

19 Q Okay.

20 A And then -- or I'm going to -- am I going to
21 store in it a cookie, which is --

22 Q Which -- which is what Newegg does.

23 A -- which is what the Newegg system does,
24 right.

25 And so -- so this is a design choice.

1 Q Okay.

2 A And if you're going to store it in a cookie,
3 then that's a -- doesn't require any additional
4 resources to hold the contents of the shopping cart on
5 the server side.

6 Q So you're --

7 A So that simplifies -- so if you -- if you
8 reduce the amount of things that the database management
9 system has to do, then that simplifies it.

10 Q Does that save space on Newegg servers?

11 A It would save space on Newegg servers, yes.

12 And it would take -- I mean, the space has to
13 be taken somewhere, so the space is taken up by sending
14 the information to the customer's computer to be stored
15 there.

16 Q Right. So in the Newegg system, space isn't
17 taken up by storing shopping carts during the selection
18 process, correct?

19 A Yeah. Those are the -- those are the
20 tradeoffs of the two design alternatives, yes..

21 Q Is there something that Newegg is sacrificing
22 by choosing this method instead of the server-side
23 method?

24 A Yes, as a matter of fact.

25 Q What is that, sir?

1 A Well, if you -- if you purchase -- you go
2 shopping at the office, and you want to buy two or three
3 things, then they're saved as a cookie on your office
4 computer, because that's the computer you're using at
5 the time, and that's the way -- it's programmed to do
6 that.

7 Then if you go home at night and say, well,
8 gee, you know, I want to add some more things to this,
9 and maybe then buy the items in my shopping cart, the
10 shopping cart isn't there. It's on your computer at the
11 office.

12 So this is -- this is one of the things that's
13 considered, and that's what makes it a design
14 alternative. There are characteristics of each way of
15 implementing the E-commerce system, and this affects the
16 decision on how to implement it.

17 Q So if a designer would select the server-side
18 option disclosed in the '314 patent, would a customer be
19 able to continue shopping from multiple computers?

20 A Yes, they would. That's one of the
21 consequences of -- of having the information on the
22 server.

23 Q I'd like to now turn our attention to the '492
24 patent.

25 I believe you testified yesterday, with

1 respect to Claim 17 of the '492 patent, that it's
2 virtually identical to Claim 34 of the '314 patent that
3 we've just discussed; is that correct?

4 A Yes, that's right. I talked about -- rather
5 than go through all of the elements of the claim, I
6 talked about the differences, yes, that's right.

7 Q And since we just talked about a lot of the
8 things that are in both claims, I'm not going to belabor
9 that point here either.

10 However, with respect to Claim 15, a hypertext
11 statement system, so, again, Claims 41 and 61, these are
12 the asserted claim, they depend upon Claim 15.

13 A Yes, that's correct.

14 Q And if Claim 15 is not infringed, Claims 41
15 and 51 cannot be infringed; is that right?

16 A That's right. Claim 41, of course, includes
17 the text here; but because of this phrase, in accordance
18 with Claim 15, that means it has to also satisfy all of
19 these limitations for Claim 15.

20 That's -- I believe that's what you said, yes.

21 Q Yes. Right.

22 This claim talks about -- it's a hypertext
23 statement system. What is a hypertext link?

24 A Pardon me?

25 Q What is a hypertext link?

1 A A hypertext link is a region on the web page
2 displayed by the browser from the code that comes from
3 the server. And the link refers to an area of the
4 screen that you can click on -- the user can click on.

5 And the computer is programmed to respond to
6 that link and take some action.

7 Typically, it brings up another web page,
8 but -- but that's -- that's a -- an example. Really,
9 it's programmed to take some action.

10 Q Is the use of hypertext a basic function of
11 the worldwide web?

12 A Yes. I have a hard time imagining the
13 worldwide web without hyperlinks.

14 Q Did Open Market invent the use of hypertext
15 links on the web?

16 A No. Those were -- well, actually, the -- the
17 notion of a hyperlink is very early. Comes from a
18 fellow named Ted Nelson, who wrote -- wrote a book about
19 hyperlinks called Computer Literacy or -- I forget
20 exactly the name of it, but -- but it was, you know,
21 decades, decades before Open Market's system. So 10 or
22 20 -- 10 or 20 years.

23 Q This claim also talks about a transaction
24 detail, transaction statement. What is that? What is
25 the transaction detail within 15(f)? Display

1 transaction details, what are those, sir?

2 A Well, they're -- I think, as you -- as you
3 might just take from reading this, they're details about
4 the transaction. The statement document consists of a
5 transaction history, and transaction details would be
6 further information about a transaction.

7 Q What type of information would you expect to
8 be in a transaction detail?

9 A Well, the claim tells us actually what
10 needs -- what, to satisfy the claim, needs to be there.
11 That's the context I used in analyzing this in the
12 claim.

13 But I would expect, you know, additional
14 information, I mean, you know, details or somehow
15 further information. It's not presented by the
16 statement without the detail.

17 Q And these relate to the past transactions what
18 you have previously purchased, how much it costs, that
19 sort of thing?

20 A Yes. Purchase transactions, right.

21 Q Can you tell me how often this hypertext
22 function is used by customers on Newegg's website?

23 MR. ADAMO: Objection. It's outside the
24 of the scope of the direct.

25 THE COURT: Restate the question.

1 MR. BALDAUF: Excuse me, Your Honor. I
2 didn't hear.

3 THE COURT: Restate the question.

4 Q (By Mr. Baldauf) The question was simply: Do
5 you know if, in fact, Newegg customers select or choose
6 the transaction details and, if so, how frequently?

7 THE COURT: Overruled.

8 A I -- actually I don't have any idea. It's the
9 capability of the website -- it's actually a very
10 powerful website; it has lots of capabilities. And all
11 I have direct experience with are the ones I used which
12 were -- I described in my purchase example.

13 So, I mean, I used it, but I really don't have
14 any idea of what frequency it's used.

15 Q (By Mr. Baldauf) Again, this claim, like what
16 we discussed -- discussed previously, requires a client
17 computer for operation by a client user. Again, would
18 you agree with me that it is the customer that supplies
19 the client computer?

20 A Yes. A customer supplies the client computer.
21 As I described yesterday, it is used by the Newegg
22 order -- order history system.

23 Q And with respect to for operation by a client
24 user, again, that's the customer?

25 A Yes, that customer is the one that uses it.

1 The requirement under the claim is for a client
2 computer.

3 Q My focus though --

4 A And it's for operation by the user, but the
5 requirement to satisfy the claim is that there be a
6 client computer, which is part of the Newegg system.
7 It's called the customer in the Newegg diagram.

8 Q Right. I was just reading the entirety of the
9 passage.

10 A Yes.

11 Q For operation by a client user.

12 A That's correct.

13 Let me add one thing.

14 Q Sure.

15 A It's actually used by -- it could be a Newegg
16 computer if they're providing testing of the system.

17 Q Okay. Thank you.

18 A That's really true for all of the claims. I
19 keep forgetting to mention that.

20 Q With respect to testing, do you know how
21 frequently Newegg tests its systems?

22 A Well, not specifically, but in the normal
23 course of doing business and adding features to
24 websites, which I am familiar with, you would really
25 test features before they were launched for customer

1 use. And I have seen some documents produced by Newegg
2 about some of their testing that they have done.

3 Q Uh-huh.

4 A And that's the normal case. You test to make
5 sure that you're not going to end up with lots of, you
6 know, upset customers because something doesn't work
7 quite right the way it was designed.

8 So the purpose of the testing is to ensure
9 that you're going to have smooth, trouble-free operation
10 when people come to use these facilities that you're
11 adding to the website.

12 Q So you believe this is internal Newegg testing
13 that they're operating, if you will, as the customer?

14 A Yes. That's a good way to characterize it.
15 It's Newegg employees with Newegg computers, obviously,
16 acting as customers for purposes of testing.

17 Q So these are not revenue-generating sales;
18 this is all internal to Newegg?

19 A No, they would not generate -- the purpose
20 isn't to generate revenue. The purpose is to make sure
21 the facilities work that are being launched on the
22 website.

23 Q 15(f) there, the client computer being
24 programmed to display the statement document to receive
25 a request from the client user to display transaction

1 details, and so on.

2 Who requests the display of transaction
3 details?

4 A Well, this claim requires that -- a client
5 computer to be programmed. And it has to be programmed
6 to do these things. And once it's been programmed to do
7 that, then it meets this claim requirement. The actual
8 requests, of course, are done by the user clicking --
9 clicking buttons.

10 Q That was my question.

11 I believe you testified yesterday that the
12 client computer runs a browser that is programmed by
13 Newegg. Is that a fair summary of your testimony?

14 A Yes. Generally, claims require two things:
15 Client computer programmed by Newegg and server
16 computers programmed by Newegg. So the client computers
17 are programmed by Newegg, as I testified yesterday.

18 Q And you believe that is satisfied by Newegg
19 sending html pages to the browser of the customer's
20 computer, correct?

21 A Yes. That's the mechanism that the Newegg
22 system uses to control the operation of the -- of the
23 customer computer.

24 Q Okay. In fact, the way this works, is it not
25 the customer computer that pulls or extracts the web

1 page from the Newegg server?

2 A No. The messages go back and forth between
3 the client and the -- and the server computer.
4 The only thing that the customer does, which is not
5 covered by the claims, is to actually connect to the
6 Newegg website. Once they connect to the Newegg
7 website, they get the initial homepage that has the
8 specials and things on it; and, at that point, all of
9 the operation of the browser is controlled by the
10 programming that comes from Newegg.

11 Q And this is subsequent to the customer
12 initially logging -- taking the action of logging onto
13 the Newegg website?

14 A Yes. It's like the customer, you know,
15 deciding to walk into Home Depot. I mean, that's kind
16 of the initial decision that the customer makes. They
17 connect to this website, and they type newegg.com, and
18 then they are connected to the website.

19 Q So after this happens, then you believe that
20 Newegg programs the customer's browser?

21 A Yes. All subsequent actions that take place
22 relative to the website are controlled by the code, html
23 code, that is sent to the browser in response to a
24 request from the client computer.

25 Q Is a browser a computer?

1 A Well, it certainly depends what you think a
2 computer is. I don't recall specifically if the Court
3 construed that. Yes, they did, actually.

4 Q Yes, he did.

5 A Let me review this here.

6 Functional unit that can perform substantial
7 computation, including numerous arithmetic operations or
8 logic operations without human intervention.

9 So the computer -- I'm sorry, what was your
10 question again?

11 Q If a browser is a computer under that
12 definition.

13 A I would say the browser is an application that
14 runs on the computer.

15 Q The browser itself is not a computer, correct?

16 A Well, when someone says go to your computer
17 and buy me a cable, then the distinction between a
18 browser and a computer might get lost. But from a
19 technical standpoint, I think of the browser as an
20 application that runs on a computer.

21 Q Right. And I was just focusing on the Court's
22 construction.

23 A Yes. But the computer is definitely a
24 functional unit that can perform substantial
25 computation, including running -- running a browser.

1 Q Does the '492 patent disclose the sending of
2 instructions to a browser as constituting programming
3 the buyer computer?

4 A Well, the -- the browser receives instructions
5 in two ways. I mean, for example, if you're going to
6 enable cookies or disable cookies, then that's kind of
7 browser-based commands that are independent of what
8 Newegg is doing.

9 But once browsers are enabled, which means you
10 can buy products, at that point the control of the -- of
11 the browser is done, relative to the claims, is done
12 completely by a code that's sent from the Newegg server
13 system.

14 Q My question, though, is specifically, does the
15 '492 patent disclose the sending of instructions to a
16 browser as constituting programming the buyer's
17 computer?

18 A Oh, I'm sorry, I misunderstood your question.
19 The -- the claim language just says that the client
20 computer is programmed, right here for example.

21 So my analysis was, okay, how does the Newegg
22 system work? Does it contain a client computer, which
23 is the second element? And then is, in fact, it
24 programmed to do the things that the claim requires?

25 And the answer is -- was yes. And it does

1 that by sending the html code from the server computer.

2 Q I understand all that. If you would please
3 answer my question.

4 A Oh, I'm sorry.

5 Q My question is very specific.

6 In the '492 patent itself, the specification
7 that the Judge described to us at the onset of this
8 trial where it discusses the operation of the invention,
9 anywhere in there does it disclose the sending of
10 instructions to a browser as constituting programming
11 the buyer computer?

12 A Oh, I'm sorry. I thought you were referring
13 to the claims. You're actually referring to the patent
14 itself.

15 Q Yes, I am.

16 A I apologize.

17 Q That's quite all right.

18 A I misunderstood the context of your question.

19 I don't remember specifically, but a person of
20 ordinary skill in the art reading the specification
21 would understand what a browser would be or could be
22 used and how they work.

23 Q To answer my question, you don't remember?

24 A I don't remember specifically, no. But I do
25 know that it would be within the knowledge of a person

1 of ordinary skill in the art that that's the way
2 browsers work, yeah.

3 Q Does Newegg install browsers on customer
4 computers?

5 A No. I think I testified yesterday that you
6 could have any one of a number of browsers that --
7 sometimes they come as part of your system. When you
8 install Windows, they're just there. And sometimes
9 people say, oh, I want to use this new Firebox browser.
10 You say, oh, okay. So you download that. So those are
11 done by the customer.

12 Q I think we can finally turn our attention to
13 the '639 patent.

14 I don't want to belabor this point, but,
15 again, we can just concentrate on these independent
16 claims, correct?

17 A Certainly. All the claim elements, whether
18 they are in the independent claims or the dependent
19 claims, must be satisfied.

20 MR. BALDAUF: If we can please pull up
21 Exhibit B, Page 1 of the report.

22 Q (By Mr. Baldauf) okay. Looking at this, it's
23 a -- part 1(a) that you've designated -- a method of
24 processing service request from a client to a server.

25 MR. BALDAUF: If we could blow up the

1 first paragraph on the right-hand side, please.

2 Q (By Mr. Baldauf) The second sentence you
3 wrote in the client server model: Client sends service
4 request over communications link to a server.

5 So would you agree with me that it's the
6 client or customer who is sending the requests?

7 A Yes. The html code behind a button, the
8 programming behind a button like we've been talking
9 about -- add-to-cart is a perfectly good example to
10 use -- that code, when it's executed by the browser, is
11 what sends the service request to the server for some
12 action. In this case, you have the cart action. But
13 that's -- that's a description of the client server
14 model. Clients request service; servers provides
15 service.

16 Q And it's the client that requests service?

17 A Yes. Yes.

18 Q If we could move on to what you have marked as
19 1(b), forwarding a service request from the client to
20 the server system.

21 Who forwards the service request from the
22 client to the server system?

23 A Well, there's a -- which claim element is
24 this?

25 Q What you have marked as 1(b).

1 A 1(b), yes.

2 Okay. This forwarding occurs in multiple
3 steps. I mean, it starts with the client; then it's
4 received by elements along the way. For example, it's
5 received by the firewall at the Newegg web system, the
6 server system, and then it's forwarded to this netscaler
7 block that I testified about yesterday, and then it's
8 forwarded from there to some other servers to actually
9 perform the action requested inside the Newegg server
10 system.

11 MR. BALDAUF: If you could please pull up
12 Page 3 to Exhibit B of Dr. Grimes' report.

13 Q (By Mr. Baldauf) Sir, Page 3 of Exhibit B to
14 your report is your explanation of how this claim
15 limitation is satisfied, correct?

16 A Yes, that's correct. This is the -- this
17 is -- what we're looking at here is my detailed
18 analysis. I summarized it yesterday, but these are the
19 details, yes.

20 MR. BALDAUF: Would you be kind enough to
21 blow up the first paragraph on the right side.

22

23 Q (By Mr. Baldauf) You wrote that to satisfy
24 this limitation: Client computer forward send service
25 requests to the Newegg server system when, for example,

1 users click hyperlinks while browsing web pages.

2 Is that accurate? Is that how that limitation
3 is satisfied?

4 A Yes. This is -- client computers forward --
5 that's right. When you click on a hyperlink, the code,
6 the html code behind that link, causes a service request
7 to be sent by the browser.

8 Q So it's the client computer that's forwarding
9 that service request?

10 A Well, the client computer generates the
11 service request. Forwarding sort of means that it's
12 been received somewhere, you know, like forwarding mail,
13 for example. I get mail and I forward it. So someone
14 else sent me the mail, but the person that receives it
15 then does the forwarding operation.

16 So client computers send a service request,
17 and then it's forwarded by other elements in the chain.
18 This is perhaps not very clearly written. But
19 forwarding means receive something and then send it on.

20 Q And you had mentioned the firewall and the
21 netscaler, correct?

22 A Those are two elements. In fact, Mr. Tittel
23 has said that the -- that this claim element is met by
24 virtue of the fact that the netscaler forwards it to the
25 server system. And that's certainly one place that it

1 is forwarded, yes.

2 Q We can let Mr. Tittel testify himself.

3 Could you show me where in your report in this
4 discussion of element 1(b) that you explain that this
5 limitation is satisfied by either forwarding from the
6 firewall or netscaler? I don't -- you can look, but I
7 don't believe it's in your report.

8 A The use of that particular example, which I
9 agree with completely, was first -- the first time I had
10 thought about that was when I read it in Mr. Tittel's
11 report.

12 Q Okay. So would you agree with me that it's
13 not in your report?

14 A I don't believe I went into that level of
15 detail on the issue, particular issue of what exactly it
16 means to forward. I have what is written here.

17 Q And that's it?

18 A Yes.

19 Q And that's that the client computers forward
20 or send service requests to the Newegg server system?

21 A Yes. Well, what I have written here speaks
22 for itself, of course.

23 Q If we could take a look at what you have
24 marked as 1(c) now: Returning a session identifier from
25 the server system to the client, the client storing the

1 session identifier for use in subsequent distinct
2 requests.

3 This includes the language client is storing
4 the session identifier for use in subsequent distinct
5 requests.

6 Is this satisfied by the customer's computer
7 storing the session identifier?

8 A The claim requires that the session identifier
9 be returned from the server system to the client. And
10 then it requires that the client store the session
11 identifier for use in subsequent requests.

12 So it's -- the storing is done by the client,
13 yes.

14 Q And then moving on from that to 1(d):

15 Appending the storage session identifier to
16 each of the subsequent distinct requests.

17 Again, is that done by the customer computer?

18 A Yes. It's controlled by the Newegg system
19 because it sends the html, which causes the browser to
20 actually do that. That's an automatic operation of the
21 browser when cookies are enabled is that the -- in this
22 case the stored session ID is stored in a cookie, and it
23 is automatically appended to requests of the browser.

24 Q But that's done on the customer computer?

25 A Yes. The request is sent from the customer

1 computer, yes.

2 MR. BALDAUF: If you could please pull up
3 Page 6 of Exhibit D to Dr. Grimes' report. If you could
4 pull up the last paragraph, please.

5 Q (By Mr. Baldauf) Dr. Grimes, you wrote in
6 your report that the conventional operation of cookies
7 is that a server system sends a cookie value to a client
8 computer, and the client computer stores the cookie
9 value for use in subsequent requests to that server
10 system.

11 What do you mean by the conventional operation
12 of a cookie?

13 A Well, that's the way all browsers that I know
14 of operate. That's what I meant by conventional is that
15 it's something that is -- is done by -- it's done by all
16 browsers that I know of. Certainly you could use for
17 doing purchases on the Newegg system.

18 MR. BALDAUF: If you could pull up
19 Slide 6 from Dr. Grimes' presentation yesterday.

20 Q (By Mr. Baldauf) Dr. Grimes, this is another
21 slide from your presentation yesterday. Is this what
22 you're referring to as the conventional operation of
23 cookies?

24 A This is a description of the conventional
25 operation of a browser that has cookies enabled, yes.

1 Q Was this invented by Open Market?

2 A No. I think it was invented by Netscape,
3 probably around 1992, as I recall.

4 Q If we could switch gears briefly. Claim 78.
5 Again, this claim, as you testified yesterday, is very
6 similar to Claim 1 that we just discussed, correct?

7 A Yes, that's correct, uh-huh.

8 Q Part A: A method of processing, in a server
9 system, service requests from a client to the server
10 system.

11 Again, are these service requests that are
12 sent by the client or customer to the server system?

13 A Yes. The service requests are from a client,
14 meaning -- meaning a client computer or the buyer
15 computer or the customer computer. Yes, those service
16 requests come from the client.

17 Q And in 78(b): Receiving, from the client, a
18 service request to which a session identifier stored at
19 the client has been appended by the client.

20 Do you agree that it is the client that -- or
21 the client's computer that has appended the stored
22 session identifier?

23 A Yes. The claim requires that they be received
24 from the client. So this is an operation that's done on
25 the server, they receive the messages from the client.

1 And, in fact, yes, that is correct. The
2 identifier stored at the client has been appended by the
3 client. That's the way the browser works.

4 Q We talked a bit -- not we, but one of my
5 associates and you talked a bit at your deposition about
6 sessions, correct?

7 A Undoubtedly, I don't remember. It was most of
8 a year ago. But I'm sure you will remind me of what I
9 said.

10 Q That's why I'm here, right?

11 A That's right.

12 MR. ADAMO: You can bet on it.

13 Q (By Mr. Baldauf) The Court has defined
14 session as a series of requests and responses to perform
15 a complete task or set of tasks between a client and a
16 server system, correct?

17 A In the context of the '639 patent, that is
18 correct, yes.

19 Q And I believe you testified that a task
20 depends upon the request that the server receives and
21 the responses that it provides to the client. Does that
22 sound accurate to you?

23 A Yes. A task is represented by the series of
24 requests and responses.

25 Q Could a session be the sending back of an ID

1 from the server to the customer's computer after
2 authentication?

3 A Well, when you do a logged-in session, which
4 involves authentication by the server, that's
5 actually -- the sending of that cookie and storing it is
6 the beginning of the session.

7 Q Okay.

8 A So that's -- that's -- my analysis shows that
9 that's when the session begins, the logged-in session
10 particularly begins.

11 Q As a task?

12 A Pardon me?

13 Q As a task?

14 A I wouldn't consider that a task, no. That's
15 the beginning point. In other words, you have to begin
16 the session, then the task consists of requests and
17 responses that occur once the session is begun.

18 Q How many?

19 A How many?

20 Q Yes.

21 A Well, at least one set of requests and
22 responses.

23 Q You talked a bit yesterday about this concept
24 of inducement of infringement. Just a couple final
25 questions.

1 Are Newegg's customers responsible for the
2 operation of Newegg servers?

3 A I can't imagine they would be.

4 Q Do Newegg's customers ever supply or operate
5 Newegg's shopping cart computers or shopping cart
6 databases?

7 A The -- the shopping cart system -- the Newegg
8 system, you know, at the data center is operated by --
9 by Newegg employees for sure. And the -- and I talked
10 about the fact that the service send htmls, so in that
11 sense they're controlling the user's computer, but they
12 don't -- the user operates the user's computer.

13 Q Thank you.

14 MR. BALDAUF: Thank you. I pass the
15 witness.

16 THE COURT: All right. Redirect.

17 MR. ADAMO: Redirect, Your Honor?

18 MR. BALDAUF: Yes, redirect.

19 MR. ADAMO: It will be brief.

20 THE COURT: Okay.

21 MR. ADAMO: Your Honor, it will work best
22 if I can stand here by the charts.

23 THE COURT: That will be fine.

24 MR. ADAMO: With my volume voice on.

25 REDIRECT EXAMINATION

1 BY MR. ADAMO:

2 Q You spent a lot of time with Mr. Baldauf on
3 the '314 patent talking about things that the customers
4 did or didn't do, or when they did them or if they did
5 them.

6 What kind of claim is the '314 patent claim,
7 Doctor?

8 A This is called a system claim.

9 Q Okay.

10 A I thought for a moment you were going to
11 delete part of the claim.

12 Q Don't worry about it.

13 Claim 35, is that a system claim?

14 A Yes, it is. In fact, all of the claims that
15 are asserted in this case in the '314 patent are all
16 what are known as system claims. They are claims about
17 the structure of the Newegg system.

18 Q All right. And I think you were making, in
19 your back-and-forth with Mr. Baldauf, you were trying to
20 point out in various of your answers that the claims
21 require computers that are programmed in a certain way;
22 is that correct?

23 A Yes. That's the -- that's the language of the
24 claim, right.

25 Q Okay.

1 A For like the client computer and the server
2 computer.

3 Q Programmed, programmed. I think I've got them
4 all.

5 Claim 34, does any element of Claim 34 require
6 any action on behalf of a customer?

7 A The claim language itself does not. I mean,
8 customers, of course, are involved; but the claim
9 doesn't require the customer action. The claim requires
10 that the computer be programmed.

11 Q All right. Let me be clear about this. So
12 let me ask you again: Do any of the elements of
13 Claims 34, 35, or 51 require any customer action?

14 A No, they do not.

15 Q All right. So besides all the time you spent
16 with Mr. Baldauf talking about what customers did or
17 didn't do with respect to the system claims in the '314
18 patent, you then turned to the '492 and you spent all
19 sorts of time talking with him about what customers did
20 or didn't do with respect to this patent.

21 What kind of claim is this?

22 A All of the asserted claims are also system
23 claims for this patent.

24 Q Those claims, those system claims, the
25 elements in those system claims call out computers that

1 are programmed to do a certain thing?

2 A That's correct, yes.

3 Q And I didn't circle the for operation before.

4 Is for operation a function of a computer?

5 A Yes.

6 Q Not structural?

7 A That's correct.

8 Q All right.

9 A It's what is the purpose, basically.

10 Q Do any of the elements of any of the claims in
11 the '492 patent, Claims 15, 21, 60, 61, do any of them
12 require any action of any type on the part of a
13 customer?

14 A No, they do not.

15 MR. ADAMO: I have nothing further, Your
16 Honor. Thank you.

17 THE COURT: Thank you. Any further
18 recross?

19 MR. BALDAUF: Nothing further, Your
20 Honor.

21 THE COURT: All right. Thank you. You
22 may step down.

23 All right, Ladies and Gentlemen of the
24 Jury, I think we will go ahead and take our morning
25 break at this time. So we will be in recess until

1 A Besides being able to give us the graphical
2 display and make it more interactive, the use of
3 hypertext links in the worldwide web, where you can
4 click on a link and go to the next page in a catalog,
5 find out more information about an item for sale or even
6 select something to buy, were a key part of what the web
7 made it possible for us to do.

8 Q All right. Let's add a few more of the dates
9 that you just mentioned on to the --on to the timeline.
10 When did Stewart and Payne start working at
11 Open Market again?

12 A That was in April of 1994.

13 Q All right. So the dates of April and May of
14 '94 that are now on the timeline, are they accurate?

15 A Yes, they are.

16 Q And you started in May, so you're now on there
17 as well, correct?

18 A Correct.

19 Q All right. Let's go back to the 1994 events
20 then.

21 At the time you joined Open Market, were there
22 other E-commerce companies at that time that you were
23 aware of?

24 A There were others starting up at about the
25 same time.

1 Q Were you familiar with some of them?

2 A Some of them that I remember from that time
3 included Netscape, a company called First Virtual, and
4 one called CyberCash.

5 Q What did they do?

6 A Netscape set out building the core pieces for
7 the web in general, the web browser and the server
8 software that would be needed for people to use the web
9 for all kinds of applications.

10 First Virtual was working on a system for
11 doing -- for buying things by e-mail that you would get
12 delivered by e-mail. Their favorite example is actually
13 a joke of the day that you could buy for a nickel.

14 And CyberCash was working on developing ways
15 of doing secure payment for credit cards over the
16 internet.

17 Q Okay. How is what you were thinking about or
18 trying to do at Open Market different or planning to be
19 different than what these other companies were already
20 trying to do?

21 A What we set out to do at Open Market was to
22 build the full set of systems that you would need to do
23 business on the internet.

24 That would, of course, include payment; but it
25 would include the presentation of products, like a

1 catalog, for sale, the ability for someone to choose
2 what they wanted to buy or choose what they didn't want
3 to buy, if they changed their mind later, complete the
4 transaction, and then keep track of what they had
5 purchased after the sale. It was really a complete set
6 of things.

7 Q All right. I referred to what Open Market was
8 attempting to do, as far as online shopping was
9 concerned, as a soup-to-nuts system. Is that accurate?

10 A I think that's a good way to describe it.

11 Q Who were the intended buyers and sellers for
12 the system, as Open Market folks viewed it, in mid-1994?

13 A We were building the tools that would
14 primarily be used -- our customers would be businesses.

15 But we thought a lot about all of the users of
16 the system, which would include anyone who was buying
17 something from those sellers, as well as the tools, of
18 course, that the sellers would need to do it.

19 And we wanted that capability to be available
20 to small businesses, as well as the large businesses,
21 and the network to be open to anyone with a network
22 connection to be able to buy things from these sellers.

23 Q Was there any thought in your minds or
24 intention at the time to put the system together so that
25 the small mom-and-pop store in Connecticut on the web

1 would look like Nieman Marcus in Dallas?

2 A That was absolutely something that we had in
3 mind, to enable small businesses to have the same kind
4 of presence on the net.

5 Around that time, there was a cartoon in the
6 New Yorker, two dogs sitting at a computer. One dog
7 says to the other: On the internet, no one knows you're
8 a dog.

9 And that really had a couple of meanings for
10 us. One was that as a seller, you could be a small
11 business there with as big a presence on the network as
12 a large seller did.

13 But also it was true for the buyers, that any
14 buyer was the same to a seller no matter where they came
15 from, no matter what they looked like, how old or young
16 they were, how they were dressed. All buyers looked the
17 same on the internet.

18 Q This -- what's up on the screen right now that
19 we're showing, is this, in fact, the cartoon you were
20 referring to?

21 A Yes, it is.

22 Q All right. Let me ask you now to look in your
23 binder -- and we'll put this up on the system -- at a
24 document that's in evidence as Exhibit P78.

25 Are you familiar with this document,

1 A A session would be a series of requests in a
2 related session of what you're doing. Browsing through
3 a catalog, choosing items, discarding items would all be
4 part of the same session. A few days later, you might
5 have another session.

6 Q And why was that a technical issue in
7 developing the type of system that you folks were
8 focusing on at Open Market in the mid-1994?

9 A Those were a problem, because the worldwide
10 web, as originally designed, was intentionally designed
11 without state, which has a lot of benefits for some
12 applications, but for the business applications we had
13 in mind, state was absolutely essential.

14 Q Did you and the other people at Open Market
15 solve these state and session problems?

16 A Yes, we did.

17 Q How?

18 A We did it in a -- in a couple of pieces for
19 the state and for sessions.

20 Q All right. Start with the first piece.

21 A For the state, we stored that information on a
22 web server so that there was a database keeping track of
23 the items in your shopping cart, is a good example of
24 the kind of state we needed to have.

25 And then that was actually connected to what

1 you were doing by the session so that you would have a
2 shopping cart for a session.

3 And that was done by attaching some
4 information that would go back and forth between the
5 browser and the server as you browse through -- as you
6 interacted with the shopping cart, and that's what we
7 called a session identifier.

8 Q Now, when you say -- said browser in your last
9 answer, as far as hardware is concerned, are you
10 referring to the client computer or the customer
11 computer?

12 A The browser is software that would be running
13 on the client computer -- that's the technical term --
14 or the customer's PC.

15 Q Do you tend to use the terms interchangeably,
16 Mr. Treese?

17 A Yes.

18 Q All right. You mentioned that you came up
19 with the idea of sending something that you just told us
20 was a session identifier back and forth between the
21 client and the server.

22 Just if you don't mind, tell us a little bit
23 more about the session identifier, please.

24 A At that time, what we did was, every web page
25 has a name called a URL. You can see it in the top bar

1 of a web browser, usually.

2 And to that, we attached an identifier that
3 would be consistent through the session even as you
4 changed pages. And that's how we built the first
5 system.

6 Q Best recollection of when someone at Open
7 Market came up with this solution to this state/session
8 problem?

9 A I believe that was in May of 1994.

10 Q Would you, in your binder, please, look at
11 Exhibit P75 that's already in evidence?

12 MR. ADAMO: And, Mr. Gooden, I guess if
13 you would blow up about the top half of the page. Come
14 down a little more. Keep going. Good. Thank you.

15 Q (By Mr. Adamo) Have you seen this document
16 before, Mr. Treese?

17 A Yes, I have.

18 Q And do you know what the date was that this
19 document was -- on which this document was created?

20 A There's information at the top indicating it
21 was dated May 2nd, 1994.

22 Q And who is the author? Is there information
23 that shows you who the author of the document is?

24 A Yes. It was written by Andy Payne.

25 Q Okay. Does this document in any way show what

1 on the website.

2 We sometimes call this "sneaker net" because
3 it involved someone running around in sneakers to
4 actually handle the order.

5 Q Well, were people actually dealing with the
6 problem or avoiding it?

7 A That was pretty much working around it, just
8 avoiding the problem.

9 Q To your knowledge, at Open Market, were there
10 other ways of maintaining state and session in May of
11 1994, other than the one you had just come up with?

12 A Not that I'm aware of.

13 Q All right. I've asked that the timeline be
14 modified so that we've now added the date of the
15 document we were just looking at, May 2nd of 1994.

16 Is that accurate, Mr. Treese?

17 A Yes, it is.

18 MR. ADAMO: And I believe, Mr. Gooden, we
19 can add another item in, that's the date of the earlier
20 memo, P78, that we just looked at, and I've asked Mr.
21 Gooden to do that.

22 Q (By Mr. Adamo) Is that accurate, Mr. Treese?

23 A Yes, it is.

24 Q All right. How long did it take Open Market
25 to get these ideas into a real live working product?

1 A Yes.

2 Q And you said that Open Market later launched
3 Transact. And Transact again was what?

4 A Transact was the software products that came
5 out of our work on the Open Marketplace.

6 Q And Transact was first sold when?

7 A That was in -- around May of 1996.

8 Q What else was happening in Open Market in
9 1996?

10 A Around May of 1996 was also when Open Market
11 went public.

12 Q Let's talk about licenses for a moment.

13 Did Open Market offer only one type of license
14 with respect to Transact?

15 A There was more than one license type.

16 Q Can you -- best recollection, can you describe
17 the types of licenses?

18 A There were at least two. One was for large
19 companies -- we called it the enterprise license -- who
20 would buy the software and operate it themselves. The
21 other was a commerce service provider license for
22 companies who wanted to provide services to small and
23 medium-sized businesses, who would be operating much as
24 what we talked about the Open Marketplace. Only those
25 companies would operate it instead of Open Market.

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1 Q Mr. Treese, I think I've just finally figured
2 out what all the popping has been. You've got an
3 extremely powerful voice. If you could tilt the
4 microphone a little bit off center and maybe drop your
5 voice just a tad. Are you a little nervous?

6 A A little bit.

7 Q Okay. You're among friends -- at least I'm
8 your friend. Try not to boom it out so much, because
9 the popping is sort of making us all -- everybody's been
10 looking around the room trying the figure out where it's
11 been coming from.

12 All right. Let's go back to talking about the
13 licenses.

14 In the customer service provider licenses, do
15 you remember any of Open Market's customers that had
16 those licenses?

17 A Those companies included AT&T, MCI, Sprint,
18 First Union National Bank. At the time, it was about 11
19 of the world's largest 15 phone companies.

20 Q Did Open Market promote the fact that it had
21 customers like AT&T?

22 A Yes, we did.

23 Q How?

24 A We would issue press releases and
25 announcements about them.

1 Q Let's go back to the other style of license,
2 the corporate customer license. Do you recall who any
3 of Open Market's corporate customers were?

4 A Corporate customers included companies like
5 Disney; 3Com; the Tribune Company, which owns The
6 Chicago Tribune; and other media properties; Business
7 Week; Time Warner for its magazines; McGraw-Hill;
8 business Week; companies like that.

9 Q Best of your recollection, do you remember
10 what a typical -- typical price for a basic corporate
11 customer license to Transact was, best recollection?

12 A I believe that was in the range of \$125,000 to
13 \$250,000.

14 Q Were there any additional costs to that
15 license that you are aware of?

16 A Yes, there typically would be.

17 Q And can you tell us what they -- what the
18 nature of those costs were?

19 A Those costs would include installation,
20 services, annual software maintenance for updates and
21 bug fixes, and things like that. And often some
22 customization and integration that would make it work
23 with other software that the company had.

24 Q Bug -- bug fixes. That basically in English
25 means that there's something wrong with the program that

1 A It was acquired by a company called Divine in
2 2001.

3 Q And it no longer exists?

4 A And Divine ran into trouble during the dot-com
5 bust.

6 Q Transact. What about the Transact product?
7 Is it still around today?

8 A The Transact product is still around today.

9 Q People still using it, to the best of your
10 knowledge?

11 A Yes, they do.

12 Q Last few questions.

13 How do you feel about the patented inventions
14 that are represented by all those grants from the United
15 States Government?

16 A I'm proud of it.

17 Q Why?

18 A First of all, as an engineer, we have a
19 technical challenge to solve those problems. And that
20 was part of the reward for that.

21 Secondly, it was the core technology that we
22 needed to build a growing software business at that time
23 in an explosion of doing business on the network.

24 And the third, that work and the work at Open
25 Market beyond that, influenced the evolution of doing

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1 business and the software that's used for it on the
2 internet.

3 MR. ADAMO: Thank you, Your Honor. I
4 have nothing further. I pass the witness.

5 THE COURT: Thank you. Cross.

6 CROSS-EXAMINATION

7 BY MR. HANSON:

8 Q Good morning, Mr. Treese. It's good to see
9 you again. I'm sure you remember that I met you on a
10 rainy day in Boston and asked you a number of questions
11 at your deposition.

12 A Good morning, Mr. Hanson.

13 Q Nice to see you again.

14 And at your deposition you answered those
15 questions under oath; isn't that right?

16 A Yes.

17 Q And that deposition was transcribed and you
18 read it and signed it?

19 A Yes.

20 Q Thank you.

21 And we can rely upon that then, can't we?

22 A Yes.

23 Q Yes. Mr. Treese --

24 MR. HANSON: I wonder if we could bring
25 up that screen that showed the pictures of the various

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 21st day of April, 2011, two bound copies of the Joint Appendix were served via UPS Next Day Air, to the following:

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I further certify that on this 21st day of April, 2011, the required number of copies of the Joint Appendix were hand filed at the Office of the Clerk, United States Court of Appeals for the Federal Circuit.

The necessary filing and service were performed in accordance with the instructions given me by counsel in this case.



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